UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

05-CR-060 (S-11)

-against-

United States Courthouse

:

Brooklyn, New York

VINCENT BASCIANO,

Defendant.

:

May 5, 2011
9:30 o'clock a.m.

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TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE NICHOLAS G. GARAUFIS
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by mechanical stenography, transcript produced by CAT.

(Jury not present)

THE COURT: State your appearances.

MS. DENNEHY: Jack Dennehy, Taryn Merkl, Nicole Argentieri, and Stephen Frank, for the government.

MR. GOLTZER: George Goltzer, Richard Jasper, Ying Stafford, for the defendant.

(Jury not present)

THE COURT: Good morning and the defendant is present.

MS. MERKL: Ms. Cordero, the daughter of Mr. Pizzolo and her mother, Mr. Pizzolo's ex-wife, are in court, and asked that I ask the Court whether they would be permitted to sit in under -- Ms. Cordero the daughter of the victim, Mr. Pizzolo, and her mother Mr. Pizzolo's ex-wife Flora Dufour have asked that they be permitted to sit in the courtroom under the Justice For All Act. I feel it is incumbent upon me to make the application to the Court. I understand the defendants has an objection.

MR. GOLTZER: We have no problem with the ex-wife. I am concerned about Ms. Cordero, the daughter, because she I expect will be a fact witness later in the day and I'm just

concerned that something may pop out on Mr. Barbieri's examination that might cause her to have an emotional response.

MS. MERKL: Under the Act the standard for exclusion of a victim witness is that there has to be clear and convincing evidence that their testimony would be altered by hearing the testimony of other witnesses and --

THE COURT: Stop. How would hearing the testimony of Mr. Barbieri possibly affect the subject matter of her testimony? I mean is really it --

MR. GOLTZER: I have no indication it would. My concern is the possibility of an emotional response based upon what I anticipate may come out on cross examination, hatred of Mr. Pizzolo, what may have been some desire to hurt Mr. Pizzolo. That's it.

THE COURT: Right.

MR. JASPER: Ms. Cordero is going to be a witness also later on and I agree the relationship -- there may be that something may come out about the relationship between either Mr. Cicale and in fact, either Mr. Cicale or Mr. Basciano and her father. She also may be a penalties phase witness. I don't know if she is or she isn't, but I wouldn't want her to hear anything about that relationship.

MS. MERKL: She's never met the defendant. She's going to testify she never met the defendant. She's met

Mr. Cicale a couple of times. He was at her wedding. He came to her father's wake. You know, she is -- her testimony regarding those individuals is pretty limited just to put it in context.

THE COURT: Well, I don't think this is clear and convincing evidence that she should be excluded for cause, but what I would say is that I would like you to advise her that the Court expects that she will not make any demonstration of emotion if she feels she has to leave the courtroom she should simply leave the courtroom, and we'll make arrangements for her to watch the trial in some other location. If she would prefer to watch the trial in a different location we will make those arrangements now, but the decorum in the courtroom is very important to give the defendant a fair trial, and the Court is concerned regarding that, and would not want anything to happen that would result in something else.

MS. MERKL: I certainly don't expect that from this witness. She's a strong women and I will let her know if she's feeling emotional she should step outside.

THE COURT: You know, she's at liberty to sit outside until she's called and as I said, if she wants to watch from a different location, then we'll arrange that.

MS. MERKL: Thank you.

MR. JASPER: Before she comes in the courtroom, I believe the government's going to introduce through

Ms. Cordero a wedding picture of her father and Ms. Cordero together and I just don't know what the relevance of that is. They're going to have wedding cards that show association of the various people in the enterprise who are giving gifts and it seems to me that a picture, with all due respect, of Ms. Cordero and her father on her we having day may be penalty phase, but I don't want to have to get up and object to that or any other questions, and I know the government's not going to go there, that is basically impact testimony now at this stage. If we get, that's a whole other deal, but I don't see the relevance of the wedding picture if we have the wedding card.

THE COURT: I understand the objection. Yes.

MS. MERKL: The wedding picture is the one photograph. This is the photograph Government Exhibit 323 and we are offering it to corroborate the testimony of Mr. Cicale that Ms. Cordero was, in fact, married in May 2004 and that several her father's guests did not come to the wedding; whereas, establishing certain factions about her wedding for the purpose of corroborating Mr. Cicale's testimony and this is just simply a picture of Mr. Pizzolo and his daughter at the wedding.

THE COURT: Isn't there another way to do that?

MS. MERKL: We don't see anything prejudicial about this paragraph. It is a picture of Mr. Pizzolo as he looked

in life as opposed to the photographs of him after soaking in a puddle over night.

MR. JASPER: That seems to be the penalty phase, he was soaking in a puddle. They don't need this to show he was alive at one point. It is unnecessary.

MS. MERKL: There is no prejudice, Your Honor.

MR. JASPER: She's going to testify she was married. Nobody is disputing that she was married and guests didn't show up.

THE COURT: I will let you know.

MS. MERKL: Thank you, Your Honor.

MR. GLOTZER: Your Honor, you indicated that you were going to think about the -- I believe whether we might be able to cross-examine on the specific defendant in a trial. The issue has passed. May I assume that the motion continues to be denied so we have a complete record?

THE COURT: Sure.

MR. GLOTZER: Thanks.

THE COURT: Anything else?

MR. DENNEHY: No, Your Honor.

THE COURT: The defense is going to play a tape?

MR. GLOTZER: No. I understand there would a stipulation from the government if the witness didn't remember or denied saying it, there would be a stipulation that the conversation took place.

MR. DENNEHY: That's so.

THE COURT: So there won't be a recording made by the defense on cross. Who is doing cross?

MR. GLOTZER: I am.

Mr. Dennehy gracious and he said it wouldn't be necessary.

THE COURT: How much more do you have, Mr. Dennehy?

MR. DENNEHY: I hope no more than an hour.

THE COURT: All right. On the subject of the wedding picture, the defense objection is sustained. The wedding picture might come in on the penalty phase, should we have one. If the government wants to show the jury how the victim looked in life, then they can crop the picture and just show the picture of how he looked in life, and I think there's nothing wrong with that, but putting the picture of the victim standing with his daughter at her wedding is more prejudicial than it is probative under 403 for the guilt phase of the trial.

MR. GOLTZER: There also happens to be an exhibit in evidence already of a photograph of Mr. Pizzolo.

THE COURT: That may be but that doesn't mean that the witness couldn't identify how the defendant looked in life from another picture, such as the one where he looks the way he looks at the wedding -- happy, young, alive. I don't see any untoward problem with that. He's the victim.

I remind everyone we are going to suspend at 11: 30 until 2:30.

G E N E R O S A B A R B I E R I , having been previously duly sworn/affirmed, resumed the stand and testified further as follows :

(The following took place in the presence of the jury)

THE COURT: Please be seated, everyone. Good morning, members of the jury. At this time we'll continue with Mr. Dennehy's examination of the witness. The witness is reminded that he is still under oath. I also remind everyone that we're going to recess at 11: 30. Go ahead, Mr. Dennehy. You may inquire.

DIRECT EXAMINATION (Cont'd)

BY MR. DENNEHY:

Q Mr. Barbieri, yesterday when we broke we were discussing the induction ceremony of you being made into the Bonanno Crime Family; do you call recall that?

A Yes.

Q I would like to show you some photographs and testimony and ask you if you recognize some of the individuals in Government Exhibit 53 in evidence, who is that?

A Rusty Rastelli.

Q Who is he?

A Boss of the Bonanno family.

Q Do you know his first name?
A Philly.
Q Government Exhibit 44 in evidence, who is that?
A Joseph Massino.
Q Who is he?
A Boss of the Bonanno family.
Q Government Exhibit 65 in evidence, who is that?
A Sal Vitale.
Q Did he have a nickname?
A Good looking.
Q Government Exhibit 56 in evidence, who is that?
A Anthony Spero.
Q What rank did he have?
A Consigliere.
Q Government Exhibit 54 in evidence, who is that?
A Nicky Santoro.
Q What rank did he have in the family?
A He was an associate and he just got made around '95, '96.
Q Government Exhibit 41 in evidence, who is that?
A Michael Nose.
Q Do you know his last name?
A No.
Q Government Exhibit Six in evidence, who is that?
A Vinny Basciano.
Q Did he have a nickname?

A Vinny Gorgeous.
Q Do you know what that comes from?
A He owned a beauty parlor in the Bronx Hello Gorgeous.
Q What's the highest rank he had in the family?
A Boss.
Q Government Exhibit 13 in evidence, who is that?
A Pete Calabrese.
Q Did he have a nickname?
A Pete Rabbit.
Q What's the highest rank did he have in the family?
A Captain.
Q Government Exhibit 26 in evidence?
A Patty DeFilippo.
Q What's the highest rank he had in the family?
A Captain.
Q Government Exhibit 55 in evidence, who is that?
A George from Canada.
Q Do you know his last name.
A Sacia (ph), or something. I am not positive how you say it.
Q What is the highest rank he had?
A Captain and he was on the committee for some time.
Q What happened to him?
A He was killed.
Q Government Exhibit 60 in evidence, who is that?

A Big Louie.
Q What was his true name?
A James Tartaglione.
Q What was highest rank he had in the family?
A He was captain. He was on a committee.
Q Whose captain?
A Mine.
Q Government 52 in evidence, who is that?
A Anthony Rabbito (ph).
Q What was his nickname?
A Fat Anthony.
Q What rank did you know to him to have in the family?
A Vinny told me he put him on as underboss.
Q Did he tell you why?
A For the gray hair effect.
Q Government Exhibit 63 in evidence, who is that?
A Tony Green.
Q What's his true name?
A Anthony Russo.
Q What is the highest rank he had in the family?
A He was on the committee.
Q Government Exhibit 28 in evidence, who is that?
A Anthony Donato.
Q Did he have a nickname?
A Little Anthony.

Q What rank did he have in the family?
A I think he was a soldier. I was never introduced to him.
Q Government Exhibit Two in evidence, who is that?
A Anthony Aiello.
Q What was his nickname?
A I don't know.
Q From what rank did he have in the family?
A Vinny told me he straightened him out. Excuse me, with Aiello I didn't know him with a nickname when I knew him but Vinny told me they called him Ace, but I only heard them from Vinny.
Q Government Exhibit 34 in evidence, who is that?
A Manny from the Bronx.
Q Do you know his true name?
A No.
Q What position did he have in the Bonanno family?
A He was acting captain for Patty.
Q Twenty-one in evidence, who is that?
A Frankie Coppa (ph).
Q What position did he have in the family?
A Captain.
Q Number 30 in evidence, who is that?
A Anthony Nicole.
Q Do you know his true name?
A No.

Q Is he the guy that got straightened out with you?
A Yeah.
Q Five in evidence, who is that?
A That's me.
THE COURT: Let me just ask the question. When you say someone was on the committee, what do you mean by that?
THE WITNESS: That they were running the family while the boss was out of commission.
THE COURT: All right. Thank you.
Q Thirty-nine in evidence, who is that?
A Frank Lino.
Q What is the highest rank he achieved in the family?
A Captain.
Q Number 47, who is that?
A Johnny Palozzolo.
Q What is the highest rank you knew him to have?
A Soldier.
Q Whose crew?
A He was with us.
Q Number four in evidence, who is that?
A Vinny Asaro -- Jerry Asaro.
Q What rank did he have in the family?
A He was captain.
Q Number 14 in evidence, who is that?
A Joe Saunder.

Q What was his true name?
A Joseph Cammarano.
Q Senior or Junior?
A Senior.
Q What rank did he have in the family?
A He was a captain and he was also on the committee.
Q Fifteen in evidence, who is that?
A Joe Cammarano Junior.
Q What rank did he have in the family?
A Soldier.
MR. DENNEHY: Can you see this (indicating exhibit)?
Q Forty in evidence, who is that?
A Chubby.
Q Do you know his true name?
A I think it is Sal Moreno.
Q What rank did he have in the family?
A Soldier.
Q In whose crew?
A He was with us and then he was put with Patty.
Q Patty DeFilippo from the Bronx?
A Yeah.
Q Twenty-four in evidence, who is that?
A Joe --I can't remember his last name.
Q What rank did he have in the family?
A Soldier.

Q Thirty-three in evidence, who is that?
A TG.
Q What's his true name?
A Anthony Graziano.
Q What position did he have in the family?
A Captain.
Q Thirty-seven in evidence, who is that?
A Bruno.
Q What's his true name?
A Indelicato is his last name. Bruno Indelicato I think it is.
Q What position did you know him to have in the family?
A Soldier.
Q Fifty-seven in evidence, who is that?
A Paul Spina.
Q What was his nickname?
A Fat Paulie.
Q What position did you know him to have in the family?
A Soldier.
Q Who's crew?
A He was originally around us and then later with Joseph Cammarano.
Q And sir, when you say, "us," what are you referring to?
A Me and Big Louie.
Q Twenty-seven in evidence, who is that?

A Joey Shakes.
Q Do you know his true name?
A No.
Q What position did he have in the family?
A Soldier.
Q Sixty-four in evidence?
A Looks like Robert Van Zandt.
Q How did you know him?
A He was in jail with me.
Q Seventeen in evidence, who is that?
A Shellack Head.
Q Did you know his true name?
A Richie Cantarella.
Q What position did he have in the family?
A Captain and I think he was on the committee some time, too.
Q Sir, when you were straightened out and made a member of the Bonanno family were you ever told any rules about carrying a gun or bringing a gun?
A Yes. You weren't supposed to ever carry a gun to the sit-down or when you were talking to another made guy.
Q What was your understanding of the reason for that?
A In case the argument got heated nobody would get out of control. Also, for law enforcement.
Q After your induction ceremony what, if anything, happened

the next that day?
A There was a little ceremony in the club.
Q When you say, "ceremony," what happened?
A Like a little barbecue and I was introduced to other made members of the Bonano family.
Q Who were some of the members you met that day?
A All the people that were at the ceremony and then there was Micky Batts, Pete Rosa, Louie Restive. There was numerous guys there.
Q How were the introductions made?
A Like a formal introduction. Louie would introduce me to, say, to Pete Rosa and they would say, Pete, this is Jimmy. He's a made member with me in my crew, and Pete's with whoever he was with at the time. He's a friend of ours.
Q Did you ever get introduced to Vincent Basciano a friend?
A Yes.
Q Approximately when?
A As a made member?
Q Yes.
A In '90 -- '91.
Q Who made those introductions?
A I'm not sure if it was Patty or Louie, but it was one of them.
Q Are you familiar with the term war chest?
A Yes.

Q What is that?
A A war chest's where everybody contributed, like, $100 a month to fight the defense of anybody that got caught doing anything illegal for the family.
Q When were you supposed to get that money if you were charged with a crime?
A If you were ever locked up doing something for the family.
Q Did you have financial obligations when you became a soldier?
A Yes.
Q What were they?
A Kick up to the captain and he would kick up to the boss.
Q When you first got put into Big Louie's crew did he have an acting captain?
A I think it was Crazy Charlie at the time.
Q What kind of guy was Crazy Charlie?
A He had machines. He was a tough guy, crazy. He acted crazy.
Q Did there come a time when you plotted to kill him?
A Yes.
Q Tell the jury what happened.
A Me, him and Big Louie had machines together in one of the stores and Louie accused him of robbing from the machines.
Q What type of machine?

A I think it was Joker-Poker or cherry master at the time.
Q Was it actually a confrontation between Big Louie and Crazy Charlie about the allegation he was stealing from the machine?
A Yes.
Q What happened?
A Louie accused him. They started arguing and then Crazy Charlie started making fun of Big Louie's mother.
Q Did you know Big Louie's parents?
A Not the father, just the mother.
Q How well did you know his mother?
A Very good. Very well.
Q What was crazy Charlie making fun about Louie's mother?
THE COURT: I'm sorry. Who's mother?
MR. DENNEHY: James Tartaglione, Big Louie?
THE COURT: Okay.
A She was a deaf mute and he was making fun of her.
Q What happened after he did that?
A They got into a heated argument. Charlie ran down the block and I never seen him again.
Q Who else was there at the time?
A Lot of members of the Bonanno family were. Mainly Sal Vitale was in the meeting with me, Big Louie and him.
Q Did you later get an order from Big Louie?
A Yes.

Q What was it?
A We had to look for Crazy Charlie and kill him.
Q How many guys looked for Crazy Charlie?
A Roughly, about five or six.
Q For how long?
A Few weeks.
Q Did you ever find him?
A No.
Q Do you know if he's alive today?
A Well, we didn't kill him, so I'm pretty sure he's alive.
Q Did there come to time when Big Louie had a new acting captain?
A Yes.
Q Who was that?
A Me.
Q And describe the relationship between Big Louie and yourself at the time you made it as acting captain?
A We were very close.
Q For how long did you remain close?
A I guess up until he cooperated.
Q Did you continue to commit crimes with him and for him?
A Yes.
Q And did there come time in, approximately, 1995 that you got arrested for a crime?
A Yes.

Q What happened?
A We were in our club, me and Big Louie, and a couple of kids in the neighborhood -- younger kids, like, in their early 20s -- got into a car accident with two guys, and the guys were abusing the kids. So I went out and I told them don't worry, we'll handle it. You know, we'll pay for the damage and everything. And the guy said to me who do you think you are. So I'm trying to keep calm. Then Big Louie came out to try to calm me down. And he wind up hitting one of the guys and then I hit the guy.
Q Did you get arrested?
A Yes.
Q What were you charged with?
A I punched him one time and knocked three or four teeth out of his mouth.
Q What happened to that case?
A It got disposed of.
Q Disposed or dismissed?
A Dismissed.
Q How?
A They found out who we were and they dismissed it.
Q Who found out who you were?
A The guys we hit.
Q So they never pressed the charges?
A No.

Q You said you knew Randy Pizzolo, how did you meet him?
A Through John Pizzolo.
Q Approximately when did you first meet Randy?
A Probably around early 90s.
Q Were you a soldier at the time?
A I'm really not sure if I was a soldier yet but I think I was.
Q How was it that John Palazollo brought Randy Pizzolo around?
A He was bringing him around in front of Big Louie to show him that who he was and John was earning with him through some concrete business.
Q What is that called in the mob?
A He was showcasing him.
Q And did Randolph Pizzolo have potential to make money for you guys?
A Not for me directly, but for John, supposedly.
Q Through what type of work?
A Construction concrete work.
Q Do you know if Randy Pizzolo had any other affiliations with organized crime?
A He had some. He had -- he said he had some connections with the Genovese family.
Q Specifically whom?
A Tough Tony from the Park Side.

Q What is Park Side.
A It's a restaurant in Corona.
Q With which family is Tough Tony associated with?
A Genovese family.
Q You mentioned as an acting captain you sometimes had sit-downs?
A Yeah.
Q Did you ever have a sit-down on behalf of Randy Pizzolo?
A Yes.
Q What was that situation about?
A John and him told Louie that they were holding $100,000 from somebody around Nicky Etkins (ph), the Lucchese family, he was a captain.
Q And who was owed the money?
A John and Randy.
Q And how much money were they owed?
A Hundred thousand dollars.
Q And so what did you do?
A Louie told me to go sit down with Nicky Etkins and try to collect the money.
Q And what was the result of that sit-down?
A I won and I got the money.
Q So was the 100,000 paid to Randy and John?
A I was given 5,000 a month and I gave it to Big Louie.
Q Eventually was the entire hundred paid?

A Yes.
Q Who actually went to the sit-down?
A Me, John, Randy, Nicky Etkins, Angelo Defenders (ph), and I think Barry Masetti (ph) drove me one time.
Q How did Randy act at the sit-down?
A I had to control him a little. He was getting out of hand.
Q Over time did you begin to see Randy Pizzolo?
A Yes. John brought him around more and more.
Q Had you -- as you got to know him what type of personality did you notice he had?
A He was a big drinker and you had to control him. He was kind of a wild guy.
Q What would he do when he drank?
A Disrespect the waitresses, waiters, and we had to, you know, control him.
Q Did there come a time, sir, when you were arrested federally?
A Yes.
Q In which district?
A Eastern District.
Q What federal charges were you charged with?
A Extensions of credit.
Q And in plain English what were you charged, what were you doing?

A Collected money for Big Louie.
Q Who were you at the time you were collecting money for Big Louie?
A Acting captain.
Q In the Mafia?
A Yes.
Q So what was criminal about what you were doing?
A I was collecting illegal money that was loaned to this one particular guy was Angelo Ales.
Q And when you were charged with those crimes were you released on the bail or detained?
A Released on bail.
Q Who else was charged with doing that case?
A Me and Big Louie and Paul Spina.
Q While you were out on bail did you have conditions of release?
A Yes.
Q Basically what were they?
A I wasn't supposed commit no more crimes or interact with anybody that had a record.
Q Did you follow the rules?
A No.
Q How?
A I met people and I will still did illegal activity.
Q How did you resolve that federal case?

A I went to jail.
Q Were you convicted?
A I pled guilty.
Q Were you guilty?
A Yes.
Q What sentence did you receive?
A Forty-one to 51 months.
Q In connection with that sentence were you interviewed by the probation department?
A Yes.
Q Did you tell the truth?
A Probably not.
Q Did you begin serving that sentence?
A Yes.
Q Around when?
A In 1998.
Q What various prisons did you serve that 41 to 51 month sentence?
A Allenwood, Otisville, MDC Brooklyn.
Q While you were at Allenwood did you get in trouble?
A Yes.
Q Who did you hang out with in the jail in Allenwood, Pennsylvania?
A A lot of made guys in the different families. Associates of the different families.

Q And did there come a time when you a bunch of you got in trouble for doing something in the jail?
A Yes.
Q Did it involve bribing the guards?
A Yes.
Q What were the guards being bribed to do?
A Bringing food in and bringing sperm out.
Q It might shock the jury, but which part of that scam were you on?
A The eating part.
Q What was punishment for that scam?
A They put me the hole for, roughly, around a year.
Q What is "the hole"?
A It's a segregation. Away from everybody. No visits. REC by yourself. No family visits.
Q At some point during that sentence did you get arrest or charged again federally?
A Before the hole time, yeah.
Q What were the charges in the second case?
A Bank fraud.
Q What did you do?
A I took a loan under my name but I inflated my income.
Q So you misrepresented to the bank what you were worth?
A Yes.
Q How much money did the bank give you?

A Around 125,000.
Q What did you do with the 125,000 they gave you?
A I lent it out to people, shylock money.
Q What do they call that in federal court?
A Loansharking, extortion, extensions of credit.
Q And lying to the bank about your income?
A Fraud.
Q Were you charged with bank fraud?
A Yes.
Q What did you do with that case?
A I got ten months running together with my other case.
Q Did you plead guilty to it?
A Yes.
Q Were you guilty?
A Yes.
Q During the time you served part of your sentence in the MDC in Brooklyn did you meet Anthony Aiello?
A Yes.
Q How did you meet him?
A When I came in he was part of, like, the welcome committee for the Italians.
Q How often did you spend time with him when you were in jail together?
A Everyday. I think I was there, roughly, about around eight months.

Q And what, if anything, did you learn about him?
A He was a rough kid, and that his father was put away for life.
Q How was his financial situation when you knew him?
A He was broke.
Q Did you help him out?
A I sent him to $200 in his commissary.
Q Would you describe him as an earner or tough guy?
MR. GLOTZER: Objection.
THE COURT: Sustained.
Q Was he a tough kid when you knew him in jail?
MR. GLOTZER: Objection.
A Yes.
THE COURT: Overruled.
Q Approximately when were you released from your federal prison sentence?
A I think it was the first time September 4, 2001, or six. Maybe it was six.
Q When you were released from prison were you put on any special conditions?
A Supervised release.
Q What is that?
A You are not supposed to interact with anybody that's been arrested before, or commit any crimes.
Q Did you follow the rules?

A No.
Q What did you do?
A I continued to lend money, take sports bets, and I interacted with the Bonanno family.
Q Specifically, with whom?
A With whom what?
Q Did you interact with the Bonanno family?
A Big Louie, Joe Cammarano. I dropped -- I owned a ravioli company. I dropped some ravioli off to Joe Massino.
Q Where was he at the time?
A In his restaurant in Casa Blanca in Maspeth.
Q In, approximately, 2002 and leading into 2003 where was Big Louie?
A He was supposedly in Florida on supervised release.
Q Why do you say "supposedly"?
A I am not sure if he was definitely there or not.
Q What did you later learn about Big Louie?
A He was cooperating.
Q Against whom?
A Me and a lot of other Bonannos.
Q How did you find out about that?
A The day I got locked up on the second case.
Q What date what that?
A I think it was the 27th of January.
Q 2004?

A The 21st or 27th.
Q How many other Bonannos were arrested at that time?
A Twenty-seven. So it was the 21st.
Q After your arrest on January 21, 2004 how did you learn that Big Louie was, in fact, a cooperator?
A They called each one of us separately down to talk to the FBI and when I came back up he wasn't there and word was around that he was cooperating.
Q Did you later find out that he had tape-recorded you?
A Yes.
Q How did you learn that?
A While I was in MDC I was fighting my case and I listened to all the tapes and I was -- I read the transcripts of what was on those tapes.
Q And in which district were you charged?
A Eastern District.
Q What were you charged with?
A Extortion, joker-poker machines, murder and murder conspiracy.
Q Which murders?
A Tommy Zullo (ph) and Russell Mauro (ph).
Q At that point did you have an understanding of what, if any, Bonanno family members had cooperated with the government?
A Yes. I knew Sal Vitale did and also Shellack Head, Coppa

and Big Louie.
Q You mentioned that you were given those Big Louie tapes as part of the discovery as a defendant?
A Yes.
Q Did there come a time when he you had a discussion with Big Louie about who would be the next boss of the family?
A Yes.
Q Was that on tape?
A Yes.
Q What, if anything, did you discuss with Big Louie at that time?
A Well, we were on the phone and I told him that Sally Bruss (ph) told me that Vinny was trying to take over.
Q Vinny who?
A Vinny Basciano.
And I said on the tapes he's not going to take over nothing. You're the one that's supposed to be in charge.
Q "You" meaning who?
A Big Louie.
Q Did you later hear yourself on tape saying that while you were in jail?
A Yes.
Q Did you also have discussions on those tapes about Randy Pizzolo?
A Yes.

Q And did there come time when you had an issue or a dispute with Randy Pizzolo before you were arrested?
A Yes.
Q Approximately when was that?
A Probably early 2004. I'm not really sure exactly when.
Q What was the nature of the dispute?
A He was going around the neighborhood disrespecting older people from the neighborhood, trying to shake them down in the bars and restaurants. He also tried to 00 I had an oil guy around me named Johnny Oil. He tried to put the glom on him.
Q Tell the jury what "put the glom" on somebody means?
A In other words, capture him so he can make and earn off him.
Q And how did you find out about this at the time it happened?
A The Junior incident, Junior came to my deli and told me that Randy was giving him trouble.
Q Who is Junior?
A He's an older man from the neighborhood where I grew up.
Q What type of business did Junior have?
A He had a restaurant.
Q What was it called?
A Junior's.
Q And who was he around in the Mafia?
A Micky the Blond.

Q What family is Mickey the Blond from?
A Genovese family.
Q Was Junior a friend of yours, just a regular --
A Yeah, we hung out together our whole life.
Q What did Junior tell you was going on in his restaurant with Randy?
A That Randy -- John Palazollo, Paul Spina was coming in come and caused problems.
Q What do you understand that to be being in the mob?
A They were trying to shake him down, terrorize him into getting some money off him.
Q How does that scam work?
A Well, usually one guy would -- probably all three of them were in there, maybe Randy and Paul were in there from what I remember and they cause a problem and then John straightens it out.
Q And John gets what for solving this problem?
A I don't know if he would have got anything because Junior was around Micky the Blond but he would get some kind of a pay off.
Q So you caused a problem and then you get paid to fix problem?
A Yes. Right.
Q What else was the problem with Johnny Oil?
A Randy tried to do the same thing with Johnny Oil, telling

him that he's a captain in the Bonanno family, and Johnny told him he's with me and he is says I'm Jimmy's boss now.

Q How did you find out about that?

A Johnny Oil called me up and he came down to my deli and told me.

Q So what did you do when he told you that?

A I told him get him on the phone.

Q Get who on the phone?

A Randy.

Q And did he call him?

A Yeah.

Q Did you speak to him?

A Yes.

Q What did you say, what did he say?

A I told his you are my fucking boss? I say you're going around telling people you're a captain when you ain't nothing and you're my boss? He copped a plea and said he never said nothing like that.

Q Did you later vent about that to Big Louie?

A Yes, yeah, I don't know if it was later or yeah, it was probably later.

Q Did you vent a little or a lot?

A I don't know if it was a little or a lot but I told Big Louie that this Randy's bothering all the people in the neighborhood, causing nothing but problems, and he told me he

would get in touch with John and have John reach out for me, and they would straighten it out.

Q Did you ever say something to the effect I'd like to get Randy and those guys in a dark alley?

A Yes.

Q Later when you got arrested and you listened to those tapes did you hear yourself saying that on the tape?

A Yes.

MR. GOLTZER: May we have we a timeframe?

THE COURT: Timeframe.

Q When did you say it on the tape approximately?

A Like I said, probably 2004, late 2003. I'm not sure.

Q Then when did you hear yourself on tape saying it?

A 2004, the end of 2004.

Q When you were in jail?

A Yes.

Q Did you ever learn of an incident of Randy Pizzolo having shot someone?

A Yes.

Q When did you hear about it?

A When I was in the street.

Q Approximately when?

A 2003 -- early 2004.

Q What were you told about that incident?

A I was told that him, Paul Spina and Johnny Palazzolo got

in an argument with somebody in the restaurant in Whitestone and Randy shot the guy in the leg and in the parking lot.

Q What, if anything, did John and Paul do?

A Nothing.

Q Were they there when it happened?

A Yeah.

Q Was it a problem for them?

A Yes, because the restaurant was a made guy in the Gambino family.

Q When you got to the MDC Brooklyn in January 2004 were there other mob guys in jail with you?

A Yes.

Q Which Bonannos did you spend time with?

A Pet Calabrese, Vinny Basciano, Patty DeFilippo, Stevie Blue, Jackie DeRoss.

Q What family is he from?

A Colombo family.

Q Were you on a specific floor or specific unit with certain inmates from the Bonanno family?

A Yes.

Q How did you guys spend your time?

A Talking, playing cards.

Q Now, you said Vincent Basciano arrived at the jail, was that in January of 04 or later?

A No later.

Q Around when?
A Around sometime near Thanksgiving, I think.
Q When Vinny got to the jail did he get put on your floor?
A I don't know if he got put right on the floor right at the beginning, but it was on the floor, but he might have gone in the another unit and then he came to our unit.
Q Did you know Patty DeFilippo?
A Yes.
Q Did you and he spend time together?
A All the time.
Q When Vinny got to the jail did he have any conversation with you?
A Yes.
Q About his status in the family?
A Yes.
Q What did he say to you?
A That he was running things, he took a vote with the captains and they put him in charge of the Bonanno family.
Q Did he say what he had done for the family?
A He was putting it back together, getting us some respect because the family was all messed up from all the rats.
Q Did he ever allude to anything that you said on tape?
A He said to me about what Big Louie -- you wanted Big Louie to take over and now look what he's doing.
Q What did he say about himself relative to what you said

on the tape?
A He said that you'd rather align yourself with Big Louie instead of me.
Q And you said that Vinny wasn't going to be the boss?
A On the tape, yes.
Q Did he refer to that at all when he got to jail with you?
A He said that you wanted him to be the boss instead of me.
Q What did he say about where's Louie now?
A That he was ratting.
Q Did you ever have a conversation about Big Louie with Joe Massino?
A Yes.
Q What did Joe Massino tell you about Big Louie and you?
A That Joe Massino told me he saved my life.
Q What did he tell you?
A Big Louie wanted to have me whacked.
Q For what?
A I had a big argument with him and I cursed him out.
Q And what did Joe Massino tell you about how he saved your life?
A That he told him he couldn't do it.
Q Did you ever have conversation with Patrick DeFilippo about Vincent Basciano?
A Yes.
Q What did Patty DeFilippo tell you about Vinny?

A Not to trust him.
Q What words did he use?
A He's liable to cop a sneak on you, he's a very capable guy, don't trust him.
Q What did you understand "cop a sneak on you" to mean?
A Try to kill me.
Q When Vincent Basciano discussed his role in the family with you did he describe to you who he had around him?
A Yeah. He said he had a couple of Luca Brasi around him.
Q What does that mean?
A Luca Brasi comes from The Godfather movie. He was Corleone's hitman.
Q And who did Vincent Basciano describe to you as his Luca Brasi?
A Anthony Aiello, Dominick and PJ.
Q Did you know who Dominick was?
A I never met him.
Q You knew Ace from jail?
A He wasn't Ace at the time, but I knew him, yeah.
Q And did you know PJ?
A Yes -- no, I didn't know PJ.
Q Did Vincent Basciano tell you about anyone that he'd straighten out with him as boss?
A He asked me if I know some guy Pepitone and Gambina. I said I heard of them through Palazollo but i didn't know?

Q Did he indicate to you anything that happened to Aiello?
A That he proposed Anthony and straightened him out.
Q Did the defendant indicate to you how he had negotiated with the other crime families on behalf of the Bonanno family.
A He said he was talking to them and telling them, you know, that he's putting everything back together.
Q Did you ever discuss with Mr. Basciano the case that he was in jail for at that time?
A I don't know if it was at that time exactly, you know, but sometime in jail, yeah.
Q Just what was the nature of the charges?
A He told me they charged him shooting a guy that was walking a dog.
Q Did he mention anything to you about that case at all, about other people?
A He said he couldn't believe Bruno wasn't here.
Q "Here" meaning what?
A In jail.
Q Did he ever discuss Anthony Donato with you?
A He was worried. He said he could have a problem if Anthony Donato flipped.
Q What did you understand that to mean?
A That he must have known something about a murder with Vinny.
Q You said you were in jail with Robert Van Zandt?

A That was the first time, yeah.
Q Where were you in jail with Robert Vand Zandt?
A Allenwood.
Q And did there come a time when you intervened on behalf of Van Zandt?
A Yeah.
Q What happened?
A He owed some people money for gambling in jail. He told me he was around Vinny so I straighten it out for him.
Q Did Van Zandt have any more problems after you straightened it out?
A No.
Q Turning now to the end of 2004 when you were in jail with Vincent Basciano did he discuss that with you at all?
A Yes.
Q What did Vincent Basciano tell you?
A He told me he was doing some construction with Van Zandt and thanks for helping him out while he was in jail.
Q Did there come a time when you and Vincent Basciano discuss Randy Pizzolo in jail?
A Did we discuss it? I don't know if we talked about it, no.
Q Did you discuss Randy and what type of person he was with the defendant?
A Yes. That he was a wild kid and a loose cannon.

Q Who said that?
A Vinny.
Q Did you agree with him?
A Yes.
Q Did Vincent Basciano ever indicate to you that he had heard what you'd said about Randy on those tapes?
A Yes.
Q How did he say that?
A You know, there's a newspaper that comes to the floor in jail and Jackie DeRoss who was like the head guy on the floor, he was like the underboss of the Colombo Family, he used to get the newspaper first, and Vinny said -- because I was Jackie's roommate, Vinny said to me get me the paper right away off Jackie as soon as it comes in.
Q Did that start right away asking for the paper?
A No.
Q How often did Mr. Basciano ask you to try and get him the newspaper?
A Like four, five days.
Q Was he just asking for the paper or was it more than that be?
A He told me get me the paper right away. Then he would look through it. One day nothing until it came up to an article.
Q Where were you when that happened?

A Sitting at a table.
Q With whom?
A Me, Patty and him.
Q Did the newspaper come?
A Yeah.
Q Who read it first?
A Jackie gave it to me, I gave it to Vinny.
Q Describe exactly what Vincent Basciano did with the paper and then what he said?
A He looked through the paper, came up to up an article, ,looked at it, handed it to me, said you owe me one.
Q When he handed you the newspaper was it opened to a particular page?
A Yes.
Q Did you look at it?
A Yes.
Q What was on the page?
A There was a body on the floor.
Q When you say, "on the floor," what do you mean by that?
A Laying in the street.
Q Did the newspaper identify who the body was?
A Yeah.
Q Who was it?
A Randolph Pizzolo.
Q After the defendant gave you that article and said you

owe me one, what did he do?
A He walked away.
Q So now who got the paper?
A Me and Patty.
Q What did Patty say?
A That kid's mouth is his own worst enemy.
Q Referring to who?
A Vinny.
Q What, if anything, did you take from that comment after Vincent Basciano said it to you, "you owe me one"?
A After I read the article I know what he was talking about. He knew through tapes that I didn't like Randy either and he said "you owe me one" 'cause he made me believe that he killed him, and he's the boss of the family -- the acting boss of the family, so now I owe the acting boss of the family a favor.
Q How did that sit with you?
A I didn't look it too much.
Q You have said in that case for which you were in jail you were charged with murders, which ones?
A Tomasula (ph) and Russel Mauro.
Q What sentence were you facing?
A Life.
Q Did you make a decision about what to do with your case eventually?

A I decided to cooperate.
Q Once you decided to cooperate with the government did you attend proffer sessions?
A Yes.
Q What happened at those sessions?
A I told the government all the crimes I committed.
Q The ones you were charged with or all the ones you committed?
A All the ones I remembered.
Q Did you talk about yourself or everyone you knew who committed crimes with you?
A Both.
Q Did there come a time when you pleaded guilty to certain charges?
A Yes.
Q What did you plead guilty to?
A The murders of Russell Mauro, Anthony Tomasulo, gambling, Joker-Pokers.
Q And those charges, were they part of a larger crime?
A Yeah. Enterprise of the Bonanno family.
Q Racketeering counts?
A Yes, RICO.
Q And what is your understanding of the sentence you face pursuant to pleading guilty to those charges?
A Life in prison.

Q Did you plead guilty pursuant to an agreement with the government?
A Yes.
MR. DENNEHY: May I approach the witness, Your Honor?
THE COURT: Yes.
MR. DENNEHY: I am showing the witness 3500 GB 3A, like Adam (handing).
Q Do you recognize that document, sir?
A Yes.
Q What is it?
A My cooperation agreement.
Q Does your signature and your lawyer's signature appear on the last page?
A Yes.
MR. DENNEHY: Any objection?
MR. GLOTZER: No.
THE COURT: All right. 3500 GB-A is received in evidence.
(Government Exhibit 3500 GB-A received and marked in evidence)
Q Tell the jury what you understand your obligations to be under this agreement?
A To be truthful.
Q About what?

A About whatever I know about myself, about anybody else.
Q What's your understanding if you get caught lying?
A My plea agreement will be ripped up.
Q What sentence do you face?
A Life.
Q Do you get to take your plea back?
A No.
Q Do you get to go to trial?
A No.
Q Do you get to fight the charges?
A No.
Q If you honor the terms of the agreement what do you understand the government's obligation to be?
A They will write a 5k1 letter.
Q What's that?
A That's a letter saying how I helped the government.
Q Who is that letter written to, a judge?
A A Judge.
Q What is contained in letter if it gets written?
A All the crimes I committed, and whatever good I did for the government.
Q What, if anything, does it allow the judge potentially to do for the sentence?
A Sentence me.
Q Does the judge have to rely on the letter?

A No, he could do whatever he wants.
Q Whose decision will your sentence ultimately be left to?
A The judge.
Q When you first got arrested in January of 2004 did you try and get bail?
A Yes.
Q Was that granted or denied?
A Denied.
Q How long were you in prison?
A Little over six years.
Q Did there come a time when you tried for bail again?
A Yeah.
Q When was that?
A In 2010.
Q At that time did the government consent to the bail package?
A Yes.
Q What was the bail package you were released upon?
A I think it was $500,000.
Q Are their conditions on that?
A Yes.
Q Since you have been released on bail did you have any interaction with the law?
A I had a little problem -- something with my wife.
Q What was going on with your wife at the time?

A She was having an affair.

Q What did you do when you found out about it?

A I tried to contact the guy.

Q Exactly what did you do?

A I just stood outside of his house.

(Continued on next page)

CONTINUING DIRECT EXAMINATION

BY MR. DENNEHY:

Q Who were you with?

A My son.

Q Did there come a time when the guy in the house called the police?

A Yes.

Q Did they show up?

A Yes.

Q What did they say to you and your son?

A You could stay there as long as you don't go on the guy's property.

Q Then the cops left?

A Yes.

Q Then what happened?

A My son got antsy, rang the guy's doorbell.

Q As your son was ringing the guy's doorbell, what was the guy doing?

A Called the cops.

Q When they came back, where were you?

A Still on the corner.

Q On the public street?

A Yes.

Q Where was your son?

A He was back with me at the time.

Q What did the cops do at the time?
A They handed us a trespassing ticket.
Q Both of you?
A Yes.
Q What happened to your son's ticket?
A He had three hours of community service.
Q For actually trespassing on the guy's lawn?
A Ringing the guy's bell.
Q What happened to your ticket?
A I had a witness that said I never went on the property.
Q What was done with the ticket itself?
A Mine was ripped up. I didn't do anything wrong.
Q Do you know when you'll be sentenced?
A Do I know when I'll be sentenced?
Q Yes.
A No.
Q As you sit here today, do you know what sentence you'll get?
A No.
MR. DENNEHY: I have no other questions for the witness.
THE COURT: Very well.
Cross-examination?

CROSS-EXAMINATION

BY MR. GOLTZER:

Q Good morning, Mr. Barbieri.

A Good morning.

Q My name is Goltzer. I represent Mr. Basciano along with Mr. Jasper and Ying Stafford?

Q When you went to this gentleman's house, who you're wife was having an affair with, were you angry at all?

A I guess I was a little angry.

Q You guess or you know?

A I guess I was angry. I know.

Q Were you a little angry or a lot?

A A little angry.

Q Why did you go to his house or near his house?

A I wanted to see if I would catch her coming out, then I was going to get a divorce.

Q You didn't need to camp out before you got a divorce, did you?

A No.

Q When you caught him coming out, what were you going to do to him?

A Nothing.

MR. DENNEHY: Objection.

A I didn't do anything.

THE COURT: Sustained. Wait until I decide the

objection. Sustained.

The jury will disregard the answer. Next?

Q Did you have to do any research to find out where he lived?

A My son did.

Q What kind of research did your son do to find out where he lived?

MR. DENNEHY: Objection.

THE COURT: Sustained.

Q Did you ask your son to do that research?

MR. DENNEHY: Objection, relevance.

THE COURT: You may answer.

A Did I ask my son? I don't know if he did it upon himself or I did ask him. I'm not sure.

Q You had spent six years in jail?

A Correct.

Q That was upon your plea of guilty to, among other things, murder?

A Yes.

Q How many murders?

A Two.

Q As of the time you were reapplying for bail, you were a convicted murderer?

A Yes.

Q Twice over?

A Yes.
Q You realized it was a privilege to get bail?
A Yes.
Q You realized you had made an agreement not to commit new crimes when you got bail.
A I didn't commit no crime.
Q But you had agreed not to.
A Yes.
Q You had agreed to be a law abiding citizen?
A I was a law abiding citizen.
Q Not to engage in violence?
A I didn't commit violence.
Q Didn't you commit violence --
MR. DENNEHY: Objection.
THE COURT: Sustained.
Q You never liked Vincent Basciano since the time he was made six months before you, right?
A I never said that.
Q Big Lou said it, though, didn't he?
MR. DENNEHY: Objection.
THE COURT: Sustained.
Q You learned from Big Lou there was an argument about who would be made first, didn't you?
A I think Big Louie did mention that.
Q People were upset. Some people were upset because

Basciano was made before you.
A Didn't mean a big deal to me either way, six months more or less.
Q You wanted Sally Daz to be the boss?
A I never said that.
Q Who did you want to be the boss of the family, Big Lou?
A Yes.
Q Big Lou wasn't going to be the boss of the family.
A I don't know that.
Q Joseph Massino told you he in fact he had appointed Vincent Basciano the acting boss?
A That was much later.
Q That did happen, didn't it?
A Big Lou cooperated already.
Q Did Joseph Massino tell you at any time that he had appointed Vincent Basciano to be the acting boss of the family?
A Yes.
Q That was while you were in jail?
A Yes.
Q You met Joseph Massino?
A Yes.
Q You and Joseph Massino were on a bus?
A Yes.
Q Joseph Massino said to you "I gave Vinny the reins," or

words to that effect?
A Yes.
Q Did Joseph Massino tell you during that conversation "Vincent Basciano is trying to forcibly take over my family."?
A No.
Q Did Joseph Massino badmouth Vincent Basciano to you?
A Not at that time, no.
Q Did Joseph Massino ever tell you during that conversation that Vincent Basciano was a bad guy, couldn't be trusted?
A No.
Q But you didn't trust Vincent Basciano.
A I didn't trust him only for what Patty told me.
Q Patty told you not to trust him?
A Yes.
Q You knew Patty for how long?
A Years.
Q You and Patty went back a long way?
A I don't know a long way but for years.
Q How many years?
A Roughly about ten.
Q You and Patty did business together?
A Not directly.
Q Indirectly?
A Yes.
Q You and Patty never had a problem?

A No.
Q You and Patty spoke to each other on a regular basis?
A More in jail.
Q You and Patty confided in each other?
A In jail.
Q Patty warned you don't trust Vinny?
A Yes.
Q You believed him?
A Yes.
Q Patty told you that Vinny could kill you?
A He said he could cop a sneak.
Q Meaning --
A He's capable of copping a sneak.
Q Meaning Vinny could kill you in secret without getting approval, right? That's what copping a sneak means?
A I guess he could.
Q When you sat down with Vincent Basciano -- by the way, do you know when Vincent Basciano got to your floor?
A Some time in November.
Q Do you know that it was November 30th at 6:30 in the evening?
A I really don't know the date.
Q Was it four or five days before Vinny got to your floor he was so anxious to get the newspaper, as you indicated on your direct examination?

MR. DENNEHY: Objection to the storm.

THE COURT: Sustained.

Q The date of the article in the newspaper was December 2nd?

A I have no idea of the date.

Q Could it have been a week that Vincent Basciano was anxious to get the newspaper?

A I think it was more around four, five days.

Q You indicated on direct examination that you were inducted into the family; is that correct?

A Yes.

Q When you were inducted into the family, you were told some of the rules; is that right?

A Yes.

Q Was one of the rules that you were told if you had any problems with anybody before this day and you didn't straighten them out, let them go?

A Right.

Q Jackie was the head guy, right, the acting boss of the Colombo Family when Vinny got to jail, Jackie DeRoss?

A He claimed he wasn't.

Q But he got the newspaper first?

A Right.

Q How many newspapers were there? You didn't have a lot of newspapers.

A No.
Q Everybody wanted to see the newspaper?
A Right.
Q Everybody wanted to go through the newspaper?
A Right.
Q Everybody wanted to go through the newspaper to see if there was anything in the newspaper about their case, right?
A I guess so, yes.
Q Did you?
A I guess I read it.
Q You went through the newspaper every day when you got it?
A I don't know about every day. I guess I did.
Q How many guards did you bribe?
A How many guards did I bribe?
Q Yes.
A I gave somebody money in Allenwood.
Q What did you give him money for?
A I never gave a guard money. I gave another inmate money.
Q To give to the guard?
A Whatever he did, I guess he gave it to the guard.
Q Do you know what he did with it?
A Sure.
Q You knew what he was going to do with it?
A Sure.
Q You told him?

A No, he told me basically we have to chip in, we're going to give it to the guard.
Q You knew you were breaking the law?
A Sure.
Q You knew it was illegal to bribe a guard?
A Right.
Q When you were applying for a bank loan for $125,000 was it?
A Yes.
Q What lies did you tell on the application?
A I lied how much money I was making.
Q How much money were you making?
A I have no idea.
Q Did you lie about making too little or too much money?
A I pushed my income up.
Q How did you do that?
A There was a guy that filled out all the paperwork. He told me what to write down. He really wrote everything down.
Q It wasn't your fault?
A Of course it was my fault.
Q How much you borrowed, $125,000?
A Yes.
Q Were you in the life at that time?
A Was I in the life? Yes.
Q How long had you been in the life when you committed the

bank fraud?
A Years.
Q Over those years, had you accumulated some money?
A I don't understand the question.
Q You made money in the years you've been in the life.
A Correct.
Q Told the jury yesterday you made millions of dollars shylocking, right?
A Right.
Q How many of those millions of dollars had you made by the time you were applying for the bank loan?
A I have no idea.
Q Were you making good money by the time you applied for the bank loan?
A Yes, gambling just as fast.
Q The truth was you were something of a chronic habitual gambler?
A Yes.
Q That was part of the problem you had with Big Lou?
A Not that I'm aware of.
Q Isn't it true that you were borrowing money wherever you could from made guys?
A No.
Q Weren't you borrowing money from made guys in other families?

A I did borrow money from other families.
Q Weren't you not paying them back?
A No, I paid everybody.
Q Did you pay everybody back on time?
A Yes.
Q Was there any reason that Big Lou would be embarrassed by you having borrowed money from other families?
A Not that I'm aware of.
Q Why would Big Lou want you dead?
A Because I had an argument with him.
Q Over what?
A It started over a girl.
Q What girl?
A One of my girlfriend's sisters.
Q Had nothing to do with money?
A He was getting paid right up until I got locked up.
Q Nothing to do with you borrowing money from other people?
A He never said anything about it.
Q Had nothing to do with you being a gambler?
A Never said anything about it.
Q What was --
A I didn't know there was a problem until Joe told me in jail.
Q Was Big Lou like a father to you?
A Yes.

Q You mentioned Crazy Charlie. Crazy Charlie had insulted Big Lou's mom?
A Right.
Q It was for a number of weeks that you guys went out looking for Crazy Charlie?
A Yes, a couple of weeks.
Q How many times did you go out looking for him?
A Maybe my turn was maybe three or four. I'm not sure.
Q There was more than one?
A Yeah.
MR. GOLTZER: Might I have a moment, Judge?
THE COURT: Yes, you may.
(Pause.)
Q Referring to 75-A, Government Exhibit 3500-GB 75-A at pages 7259 to 7260 beginning at line 22.
Were you asked these questions, did you give these answers at a prior trial, Mr. Barbieri, under oath.
"QUESTION: Did you kill Crazy Charlie?
"ANSWER: No.
"QUESTION: Why is that?
"ANSWER: We looked for him one time. We didn't find him and it was forgotten about.
"QUESTION: And as far as you know is Crazy Charlie alive today?
"ANSWER: Yes."

Did you give those answers to those questions under oath at a prior trial?
A I might have.
Q Was it one time or more than one time you went out looking for Crazy Charlie?
A Probably more than one time.
Q Was it three times or four times?
A I'm not really sure.
Q But it wasn't forgotten about after one time?
A No.
Q Was it four days or five days Mr. Basciano wanted to see the newspaper?
A I'm not exactly sure.
Q You were in the hole for a year?
A Yes.
Q Didn't like it?
A What do you mean I didn't like it?
Q Very unpleasant place to be?
A I guess so.
Q You guess or you know?
A It was jail. Jail is jail.
Q Really, the hole is much worse than general population, isn't it?
A No, sometimes it ain't. You're alone, better off.
Q For a year?

A The only thing bad, no visits.
Q You did 41 to 51 months?
A No, I did 36 months, sentenced to 41 to 51.
Q You said you probably lied to probation?
A Not probably, did.
Q What did you lie about?
A I have no idea, probably about meeting somebody.
Q Is that before you were sentenced that you lied to probation?
A Probably.
Q Did you probably lie to law enforcement on any other occasion?
A Probably.
Q When?
A When I was in the mob.
Q When you were on supervised release you began to give out money at usurious interest rates?
A Excuse me?
Q You continued to loan money out as a loan shark while you were on supervised release?
A Yes.
Q You know what usury is?
A Shylocking.
Q What does that mean?
A I lent people money for interest.

Q How much interest, the legal rate of interest?
A Illegal.
Q Do you know what the legal rate of interest is?
A I think around 17-18 percent a year.
Q You were loaning out money at 150, 200 percent a year?
A Probably.
Q Did you get the loan from the bank for $125,000?
A Yes.
Q What interest rate were you paying on that loan?
A I really don't recall.
Q Did you pay back the loan?
A I paid it back until I was incarcerated.
Q Did you pay it back all at once or did it take you a while?
A I didn't finish paying it back.
Q You still haven't paid it back?
A No.
Q What happened to the millions of dollars you made over the years?
A I gambled it away.
Q You have nothing left?
A I don't have anything, no.
Q Where did you get the $500,000 to post the bail?
A My wife and my nephew signed for me.
Q Did they have to post any security?

A No.
Q You're out on bail after pleading guilty to two murders on two signatures?
A Correct.
Q With the government's agreement?
A Yes.
Q Paulie Spina used to cause problems with Randy Palazzolo in the restaurants as far as you knew?
A That's what I was told.
Q Who told you that?
A Bari Mascitti.
Q Bari Mascitti is who?
A Soldier in the Bonanno Family.
Q In whose crew is Bari Mascitti?
A I'm not sure now. He was with me and Big Louie.
Q Bari Mascitti told you Randy was a wild guy?
A Yes.
Q Bari Mascitti told you Randy had connections that made Johnny Palazzolo a lot of money?
A No.
Q Everybody knew Randy was a wild guy, right?
A Yes.
Q In fact, everybody knew that there were times when Randy was a pain in the neck?
A Yes.

Q Johnny kept him around?
A Yes.
Q Big Lou wondered why Johnny kept him around, didn't he?
A Yes.
Q Big Lou, you were told that Big Lou asked Johnny why he kept him around?
A Yes.
Q You were told Randy Palazzolo had connections to things in the street, right?
A Yes.
Q You were told Randy had good things in the street?
A I don't know if they were good things.
Q Wasn't Randy kept around because he made money for people, for Johnny Palazzolo?
A He was John's guy. I don't know too much about him.
Q What you do know is that he was a thorn in your side.
A I don't know about a thorn in my side. I know he was bothering old people in the neighborhood.
Q The old guy, a guy by the name of Junior?
A Yes.
Q That was a restaurant scam?
A Yes.
Q He was told by somebody who was made to go into the restaurant and give Junior a problem, right?
A I don't know that part.

Q Isn't the scam a made guy goes in, I'll solve your problem? You get out of here. The made guy looks like a hero. Then he's on the take?
A That's happened before. I'm not sure if that's what happened, no.
Q When did it happen at Junior's, do you know?
A I think I said 2003 or early 2004.
Q When you were meeting with Vinny after Palazzolo was killed, did you and Vinny discuss the fact that you were in trouble because Big Lou had flipped?
A Did we discuss that?
Q Yes.
A I think it was open book. Everybody was in trouble. The whole 27 guys were in trouble. I don't know if we discussed it or not. I'm not sure.
Q You indicated that one of the rules was you couldn't go to a sit-down with guns; is that right?
A Yes.
Q That's because there's a concern in the mob that people might get angry, start shooting?
A Yes.
Q Is that your understanding, sir?
A Yes.
Q Is it the same rule when a made guy calls up and says I've got a problem, come help me?

A I don't understand the question.
Q If I'm a made guy and you're a made guy, we're going to have a meeting, I can't carry a gun to the meeting?
A You're not supposed to.
Q If I'm an associate, you're a made guy, you call me up to meet with you, I'm not supposed to carry a gun to the meet?
A You're not supposed to.
Q If you're a made guy, I'm an associate, you call me up, say there's an emergency, I have a problem, can I carry a gun to help you?
A I guess you could. I'm not sure.
Q It wasn't one of the rules you were told about when you were inducted that if somebody calls for help, you can't carry a gun to help him out?
A Nobody said that.
Q You never heard that?
A No.
Q In all your years in the mob?
A No.
Q Vinny told you that there was a vote taken by the captains?
A Correct.
Q Did you ever hear that from any place else?
A No.
Q Do you know whether Vinny was telling you the truth?

A He told me that. I don't know, I guess --
Q There's a lot of deception in the mob, right?
A Yes.
Q People lie all the time?
A I don't know about all the time but I'm sure they lie.
Q You've lied as a member of the mob?
A Of course.
Q You've lied to other mobsters?
A Probably.
Q You've lied to law enforcement?
A Probably.
Q There are any number of reasons you might lie?
A I'm telling the truth now.
Q But you might lie to cover something up for somebody, not now but in the past when were you in the mob?
A Probably.
Q You wouldn't lie now?
A No.
Q But when you were out on the street, would you lie about money?
MR. DENNEHY: Objection, asked and answered.
THE COURT: Sustained.
Q You knew that other mobsters could lie to you?
MR. DENNEHY: Objection.
A Probably.

THE COURT: I'll leave it. Go ahead.

Q When Vinny was meeting you in the jail, he was the acting boss of the family. He was trying to get your loyalty, wasn't he?

MR. DENNEHY: Objection.

THE COURT: Sustained.

Q You didn't know if Vinny was telling you the truth, did he?

A I know because Joe told me.

Q Joe who?

A Joe Massino.

Q When?

A When we were on the bus.

Q When?

A I have no idea. Joe was fighting his case.

Q You didn't know whether Joe knew he got the truth from Vinny, did you?

MR. DENNEHY: Objection.

THE COURT: Sustained.

Q When Vinny told you you owed me one, you didn't know if he was being honest with you, did you?

A He was looking for paper. When he found it --

Q You didn't know he was trying --

THE COURT: Is that the end of your answer, when he found it?

THE WITNESS: Yes.
Q You didn't know that he wasn't trying to put you in his debt, did you?
MR. DENNEHY: Objection.
THE COURT: Sustained.
Q You still didn't trust him, did you?
MR. DENNEHY: Objection.
THE COURT: Sustained.
Q Did you trust Vincent Basciano at that time?
A Patty told me not to trust him.
Q You trusted Patty?
A Yes.
MR. GOLTZER: No further questions.
THE COURT: Redirect?
MR. DENNEHY: No, your Honor.
THE COURT: We'll a short break. All rise for the jury.
(Jury leaves courtroom).
THE COURT: You all may be seated.
The witness is excused. You may stand down.
THE WITNESS: Thank you.
THE COURT: You're welcome.
(Witness leaves courtroom.)
THE COURT: Who is your next witness?
MS. MERKL: We have a very short witness, then

Ms. Cordero. Maybe we could do two short witnesses.

THE COURT: Two short witnesses would be good.

Is Ms. Cordero a short witness?

MS. MERKL: Not a long witness.

THE COURT: We're going to recess at 11:30 promptly.

MS. MERKL: Let me quickly make sure she's still available.

(Recess.)

(Jury enters courtroom.)

THE COURT: Please be seated.

The government may call its next witness.

MS. ARGENTIERI: John Fabijanic.

J O H N F A B I J A N I C

having been duly sworn/affirmed, was examined and testified as follows:

THE CLERK: Please have a seat. State and spell your full name for the record.

THE WITNESS: Last name, Fabijanic.

THE COURT: First name is John?

THE WITNESS: First name is John.

DIRECT EXAMINATION

BY MS. ARGENTIERI:

Q Where were you from?

A I was born in Croatia.

Q What do you do for a living?

A I'm a manager at the Piccolo Venezia restaurant.
Q You said that was located in Astoria?
A Astoria, 42-01 28th Avenue.
Q Is that in Queens?
A Astoria, Queens, correct.
Q Directing your attention to October, 2004, did the restaurant that you work in, Piccolo Venezia host an event for the Palazzolo family, do you recall?
A Yes.
Q Do you recall what date?
A October 23rd.
Q Who is the party for specifically?
A Roxanne.
Q What was the occasion?
A It was a baby shower.
Q Were you there that day?
A Correct, I was there.
Q What time did the event start?
A The event started approximately 12:00 o'clock and it finished 4:30-5:00 o'clock in the afternoon.
MS. ARGENTIERI: May I use the Elmo, Judge?
THE COURT: Sure.
Q I'm showing you Government Exhibit 51 in evidence. Who is that, sir?
A That's Randy.

Q Was Randy at the event on October 23rd --
A Yes, he was.
Q How is Roxanne, if you know, related to Randy?
A I don't know.
Q You said he attended?
A Yes.
Q Had you seen him prior to the date of this other shower?
A Yes.
Q Where did you usually see him?
A In the restaurant.
Q Eating?
A Yes.
MS. ARGENTIERI: May I approach?
THE COURT: You may.
MS. ARGENTIERI: I'm showing the witness Government Exhibit 312.
THE COURT: Government Exhibit?
MS. ARGENTIERI: 312 for identification.
Q Do you recognize this?
A Yes.
Q What is this?
A That's a reservation book.
Q Is it the reservation book for Piccolo Venezia restaurant for 2004?
A That's correct.

Q Was this maintained in the ordinary course of business?
A Yes, correct.
MS. ARGENTIERI: The government moves to admit it.
MR. GOLTZER: No objection.
THE COURT: Received in evidence.
(So marked.)
MS. ARGENTIERI: Might I publish a page of this to the jury?
THE COURT: Sure.
Q Sir, the front of this book, it says the year?
A 2004, correct.
Q This is the reservation book for that year?
A Correct.
Q Then this day?
A October 23rd.
Q That was a Saturday?
A Correct.
Q Can you indicate what this line says I'm pointing to?
A It says Roxanne.
Q Then a phone number?
A Phone number 347.245.2154.
Q Over to the right, does it say the word "Randy"?
A Correct, yes, it does.
Q What does it say next to that?
A VIP.

Q What does that mean?
A Very important person.
Q The number 46 circled, does that mean something?
A I don't see -- no, that's five-zero.
THE COURT: You have the wrong line.
A 46, that's a different table.
Q The number 50, does that mean something?
A The amount of people, yes.
Q This is for October 23rd, 2004?
A Correct.
Q I'm showing you Government Exhibit 47. Do you recognize that?
A That's John.
Q Where did you see John?
A He used to come to the restaurant.
Q I'm showing you Government Exhibit 57 in evidence. Do you know that person's name?
A Yes, he used to come to the restaurant, too. I don't know his name.
MS. ARGENTIERI: No further questions.
THE COURT: Anything on cross?
MR. GOLTZER: Yes, thank you.
CROSS-EXAMINATION
BY MR. GOLTZER:
Q How are you?

A Fine, thank you.
Q Did you happen to notice anything unusual about the baby shower?
A No, everything was nice.
Q Did you happen to see Randy there, if you remember?
A Yes.
Q Was he happy, upset? How did he seem?
A Happy as usual.
Q Did that change in any way at any time?
A (No response.)
THE COURT: You have to answer yes or no.
A No.
Q Did he settle up afterwards?
A Yes.
Q Was everything satisfactory?
A Yes.
Q Do you recall what time this ended? You mentioned 5:00 o'clock?
A I would say 4:30, 5:00 o'clock in the afternoon.
Q By what time did he settle up for the bill?
A The bill, I don't know. 5:30, you know, before the regular business started.
Q Everything was still happening?
A Everything was fine.
MR. GOLTZER: Thank you.

THE COURT: Anything further?

MS. ARGENTIERI: No, Judge.

THE COURT: The witness is excused. You may stand down, sir.

(Witness excused.)

THE COURT: Call your next witness.

T H O M A S C R O W E

having been duly sworn/affirmed, was examined and testified as follows:

THE CLERK: Please state and spell your name for the record.

THE WITNESS: Crowe, C R O W E, Thomas.

DIRECT EXAMINATION

BY MR. DENNEHY:

Q Tell the jury what you do for a living.

A I'm a retired New York City detective. I now do security and body work for prominent New York City sports officials.

Q For how long were you a New York City detective?

A 20 years.

Q What was your last assignment?

A I was assigned to the Organized Crime Investigation Division.

Q Did there come a time in approximately the end of 2001 that you moved to the Throggs Neck section of the Bronx?

A Yes, there was.

Q Did you later learn who lived across the street from you?
A Yes, Debra Kalb.
Q Who is Debra Kalb?
A She was a girlfriend of Vincent Basciano.
Q Did there come a time when you would see him across the street from where you lived?
A I would see him routinely, daily basis at some point.
Q With which individuals?
A With Debra Kalk, the landlord, the owner of the building, Sally Daz, several associates; Dominick Cicale, Michael Mancuso, Anthony Donato, several others that just don't come to mind right now.
Q Did there come a time when you photographed those individuals at various times if you saw them outside your house?
A Yes, I did.
MR. DENNEHY: Without objection, I'm going to offer into evidence Government Exhibits 238, 239, 240, 241, 247, 248 and for each of those numbers, the dash-1 which is the blowup of the same.
THE COURT: Any objection?
MR. GOLTZER: No, sir.
THE COURT: Government Exhibit 238, 239, 240, 241, 247 and 248 are admitted into evidence and the blowups of each of them as a dash-1.

Q Sir, Government Exhibit 238 is an exhibit with four photographs. Can you tell us the people that are depicted in those photographs?

A Yes, the individual who is seated with his back to us in the orange jogging suit, the top left-hand corner, Alan Handler. Facing him wearing glasses, Vincent Basciano.

Q On whose porch or steps are they seated?

A Debra Kalb's patio outside the doorway from the residence.

Q For the record, number 1 is Alan Handler, number 2 is Vincent Basciano?

A Yes, that's correct.

Q I'm showing you now Government Exhibit 239 in evidence. This is another photograph you took?

A Yes, it is.

Q Of the same house?

A Yes, it is.

Q Who is the individual that I'm indicating here by number 1?

THE COURT: Please state which photo it is for the record. Otherwise, we won't have an accurate and complete record.

Q In Government Exhibit 239, the same individual appears in all four photographs and I've drawn a number 1. Who is that?

A Salvatore Zottola, Sally Daz.

Q You said he was the owner of that property?
A Yes.
Q How did you know that?
A Just as I've had conversations with neighbors. He was a prominent figure in our surveillance. I followed him to many of his locations he owned, had rented out, had family members living in. A lot of these buildings had on the facades of them, looked like giant coins, almost similar to the size of the clock hanging above the courtroom doors. On there, there would be mementos to his deceased wife or family members, family members' names and over a period of two years of surveillance, a lot of locations that he owned, I recognized these items were placed up on the facade of the building and this house having one of them.
Q The one across the street from yours?
A That's correct.
Q Government Exhibit 240 in evidence, who is the man in those photographs looking at the motorcycle?
A That's Vincent Basciano.
Q The female?
A Debra Kalb.
Q Government Exhibit 241, did you take this photograph as well?
A Yes, I did.
Q Who is the individual that's depicted in both of those

photos?
A That's Dominick Cicale.
Q Whose vehicle is he seated?
A That's Vincent Basciano's Lincoln Navigator.
Q Government Exhibit 247 in evidence, who is depicted here on the left, number 1?
A On the left is Vincent Basciano.
Q On the right, number 2?
A Dominick Cicale.
Q Where did you take that photograph?
A That was in a location on Randall and Tremont Avenue. There was a bar there called the Randall Tavern, also a florist on the corner and at one point it was a hair salon Mr. Basciano had owned, Hello Gorgeous. That's the location they were in front of.
Q Lastly, detective, Government Exhibit 248, where was that photograph taken?
A This is taken on Harding Avenue just -- I guess you would say east, southeast of Tremont Avenue, between Calhoun and East Tremont Avenue.
Q In each of the four photographs we have the same three men, numbering, 1, 2, 3. Can you tell us who is depicted in number 1?
A Number 1, just in red with the white sneakers, was Dominick Cicale. Number 2, in the blue jogging suit, Vincent

Basciano. Number 3 with the shorts and the white T-shirt is Anthony Donato.

THE COURT: That's from left to right?

THE WITNESS: Yes.

Q What was going on at that location when you photographed it?

A We had done a surveillance where Mr. Cicale and Basciano had arrived at his residence on Schurz Avenue. They had walked down Revere up to this location which is a construction site, single two-family brick residence. We had observed Mr. Donato whose vehicle is the vehicle that is gray with the lights on facing them, he proceeded to another construction location, met Mr. Cicale and Basciano at this location. They engaged in a brief discussion and all three subjects then left the location.

MR. DENNEHY: I have no other questions for the detective.

THE COURT: Cross-examination?

MR. GOLTZER: Yes, your Honor.

CROSS-EXAMINATION

BY MR. GOLTZER:

Q Good morning, detective. How are you?

A Good morning.

Q Tell us, if you can, over what period of time you conducted surveillance of Mr. Basciano?

A I started conducting Mr. Basciano some time in January of 1999 up until my retirement from the New York City Police Department in 2005.

Q When did you stop taking surveillances of Mr. Basciano, if you recall?

A Well, Mr. Basciano is the focus of our investigation up until 9-11. At that point, our focus was changed from La Cosa Nostra to terrorism.

Q You took photographs and the like since 2001?

A Thereabouts.

Q Nothing after 2001?

A Up until Mr. Basciano's incarceration, I had seen him the day of the arrest. I was on the front stairs of his house when he was placed under arrest.

Q Between 2001 and 9-11, that terrible day, a day at Mr. Basciano's residence, you didn't do any surveillance of Mr. Basciano?

A I can't say whether I did or didn't.

Q Don't have a recollection?

A I don't know.

Q You don't have any photographs?

A Not that I have presently.

Q You have no photographs of Vincent Basciano prior to 2001 with Mike Mancuso?

A That I can't say.

Q Or even afterward?
A Again I, I can't say.
MR. GOLTZER: Thank you.
THE COURT: Anything else?
REDIRECT EXAMINATION
BY EXAMINER NAME: Den' HEE
Q When Mr. Goltzer asked you about doing surveillance, did you understand him to mean as part of your team as organized crime, detective work?
A That's correct.
Q The photographs I showed you, are those photographs you just took out of your own house?
A That's correct.
Q When did you live in that house?
A I moved in there Memorial Day of -- I don't want to say -- 2001 -- no, sorry, 2002. I moved out the year afterwards when I got married.
Q These photographs that the jury just saw, were they taken during that year that you lived across the street from Ms. Kalb?
A Yes, they were.

RE-CROSS EXAMINATION

BY MR. GOLTZER:

Q During the year you did live across the street from Ms. Kalb, you took no photographs of Mr. Basciano with Mike Mancuso?

A No, I may not have had my camera that day.

MR. GOLTZER: Thank you.

THE WITNESS: You're welcome.

THE COURT: Anything else?

MR. DENNEHY: No.

THE COURT: Very well. The witness is excused. You may stand down, sir.

THE WITNESS: Thank you.

THE COURT: We're now going to recess until 2:30 p.m. All rise for the jury.

(Jury leaves courtroom).

THE COURT: Please be seated. Let me ask the government, could you give us the lineup for this afternoon?

MS. MERKL: We have a couple of exhibits to offer. My understanding we've worked out any anticipated objections. Then we're going to be calling Ms. Cordero who is brief, Mr. Abando who is a record custodian for the MDC. We expect him to be perhaps a half hour and the ME, the medical examiner. That's not expected to be particularly long.

THE COURT: And?

MS. MERKL: Then we're going to rest.

THE COURT: Sorry?

MS. MERKL: Going to rest.

THE COURT: That should take the balance of the day, I take it?

MS. MERKL: It's probably about an hour, your Honor, an hour and a half.

THE COURT: The defense should be ready. We'll have motions once you rest and then if the motions are denied, we'll go on to the defense case, if any.

MS. MERKL: Very good.

THE COURT: How do you want me to pose this?

You want me to say anything to the jury about the defense case or roll right along?

MR. GOLTZER: I expect we roll right along. What I think we would like to do first is publish to the jury the allocution or part of the allocution of Mr. Mancuso. We have to actually go over it with the government as to redactions.

What I would like to do is offer it subject to redaction, not publish the physical document to the jury, read agreeable portions. Then I expect we'll have one witness available. We may try to put in some phone records by stipulation. That should take up the rest of the day, I hope. We expect three government witnesses tomorrow and that should take up the day.

MS. MERKL: We will certainly make every effort to work out any disagreements or agreements we have regarding exhibits on this break. We still don't know which exhibits the defense plans to introduce, whether we'll have any objections.

MR. GOLTZER: I had discussed with somebody on the prosecution team one month of Mr. Palazzolo's phone records. I don't expect there's a dispute as to offering the activity. There may be relevancy.

MS. MERKL: We haven't been provided a copy what they plan to introduce.

MR. GOLTZER: We'll take care of it.

MS. MERKL: We can't say what until we see it.

THE COURT: Be back at 2:15 so I can be advised of the results of your conversations.

MS. MERKL: Thank you.

(Continued on next page.)

(Luncheon recess.)

A F T E R N O O N S E S S I O N

THE COURT: All right. Bring in the jury.

Are we using the Elmo this afternoon?

MS. MERKL: Yes, we are. I will get it out.

(The following took place in the presence of the jury).

THE COURT: Please be seated. The government may call its next witness.

MR. DENNEHY: The government has an exhibit to read for the jury by consent.

THE COURT: Very well.

MR. DENNEHY: Your Honor, this is Government Exhibit 305. I offer that.

THE COURT: 305?

MR. JASPER: No objection.

THE COURT: Government 305 is received in evidence.

(Government Exhibit 305 received and marked in evidence).

You may read it.

MR. DENNEHY: Daily News Brooklyn Sports Final, Thursday, December 2004.

The relevant page: Sheet covers the body of Randolph Pizzolo who was shot four times and found face down in a rain puddle in Brooklyn yesterday.

Thank you.

THE COURT: All right.

MR. FRANK; Judge, the government previously offered Government Exhibit 218 through Agent Breslin subject to connection.

THE COURT: Yes.

MR. FRANK: The defense does not object is my understanding to have the exhibit now in evidence.

THE COURT: All right. 218 is received in evidence without limitation.

(Government Exhibit 218 received and marked in evidence).

MR. FRANK: Thank you. Will.

MS. MERKL: The government calls Connie Pizzolo Cordero.

C O N N I E C O R D E R O , having been first duly sworn/affirmed, testified as follows:

THE WITNESS: Yes.

THE CLERK: Please have a seat and please state and spell your full name for the record.

THE WITNESS: Connie Cordero. C-O-R-D-E-R-O.

THE COURT: You may inquire.

MS. MERKL: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. MERKL:

Q Good afternoon, ma'am.

A Hi. Good afternoon.
Q How old are you?
A Thirty.
Q Where were you born?
A I was born in Germany.
Q Where did you grow up?
A I grew up in Staten Island, Astoria. We moved a lot.
Q Why were you born in Germany?
A My dad was in the army and my mom went out to Germany to be with him.
Q Do you know what division or branch of the army your father was in?
A I don't.
Q Who is your father?
A Randy Pizzolo.
Q Ms. Cordero, I'm going to show you what's been marked 323?
THE COURT: Any objection?
MR. JASPER: No objection, Your Honor.
THE COURT: All right. Government Exhibit 323 is received in evidence.
(Government Exhibit 323 received and marked in evidence)
Q Do you recognize the person depicted in that photograph?
A Yes.

Q Who do you recognize it to be?
A My father.
Q Ms. Cordero, are you currently working?
A No, not right now.
Q What do you for a living?
A I'm a full-time mom and I'm a nursing student.
Q When did you enroll in nursing school?
A In January of 10 I started school again and I just got into this program of January of this year.
Q When are you scheduled to graduate nursing school?
A Probably January 2013.
Q 2013?
A Yes.
Q Prior to starting will nursing school what sort of educational background did you have?
A I went to Fashion Institute of Technology for a little while and then I dropped out because I was working full time.
Q What sort of work did you do when you stopped going to school?
A I was an executive assistant for a few years, I owned a business, I went back and I started dabbling in property management, I went to NYU, I started -- property management.
Q And then you ultimately decided to enroll in nursing school?
A After I got laid off. The economy went down.

Q Are you married, ma'am?
A I am.
Q Who are you married to?
A Sam Cordero.
Q Do you have any children?
A Two.
Q How old are they?
A Five and four.
Q Ms. Cordero, when is the last time you saw your father?
A About a week before he died.
Q If I could direct your attention to the period before his death, what was your father doing for work in 2004?
A He was doing contracting.
Q Do you know what company he worked for at the time?
A I believe it was his own company, A&P Contracting.
Q Did your father work with anyone in this construction business?
A I thought he was -- I thought it what his business but I believe he worked with Al Perna.
Q Do you know what type of construction work your father's company specialized in?
A Foundation work.
Q Is that also involving concrete?
A Yes, I guess you could say so.
Q How long did your father work in construction prior to

his death?
A My whole life, at least, he worked in construction. He also dabbled off into different businesses along the way but he, for as long as I can remember, he's always been in construction.
Q In addition to construction, you said he was involved in other businesses?
A Yes.
Q What sort of businesses was he involved in?
A He owned a bar. He had, I think he said, he had an oil company at one time.
Q At some point did you become aware of a property that your father had purchased in Florida?
A Yes.
Q How did you become aware of it?
A Because -- well, he said he wanted to go down to Florida and start doing some -- just like renovating -- not renovating -- building up an area. It was, like, a desolate area. He was buying some properties. He wanted to build up the area and start doing some work down in Florida.
Q Approximately when did you learn that your father was planning to invest in properties in Florida?
A In early November of 2004.
Q Did you learn whether your father had, in fact, purchased any property in Florida?

A Yes, he did.
Q What, if anything, happened with respect to that property after your father's death?
A I acquired it.
Q Ms. Cordero, have you ever met Vinny Basciano?
A No.
Q Have you ever met an individual named Dominick Cicale?
A Yes.
Q I'm going to show you a picture that's in evidence marked Government Exhibit 18. Do you recognize the person in that photograph?
A Yes, I do.
Q Who do you recognize it to be?
A Dominick Cicale.
Q You mentioned a moment ago, Ms. Cordero, that you were married?
A Yes.
Q When did you get married?
A In May of 2004.
Q Where was your wedding?
A It was St. Ann's in Staten Island and Leonard's, Great Neck I had my reception.
Q Did your father participate in the wedding?
A Yes.
Q How so?

A He did everything that a father does. He gave me away, he organized the reception.
Q Just to be clear for the record, what was your wedding date?
A May 22, 2004.
Q Did your father invite any guests to your wedding?
A He did.
Q Did he provide you with a list of names for those guests?
A No.
Q How did it work?
A He asked me for some invitations and I give him a stack of invitations and then, I guess, he gave them out to his friends.
Q Were any arrangements made at your reception for your father's guests?
A Yes.
Q What arrangements were made?
A There was a big long rectangle table at the far side of the reception for his guests.
Q Was the table full?
A No. It was half full.
Q Do you know what happened?
A I guess they didn't show up.
MR. GOLTZER: I'm sorry, Your Honor, I can't hear.
THE WITNESS: I said I guess they didn't show up.

Q Of the people that your father invited who did come to the wedding, did you know them in advance?
A Umm, no. I think maybe I had seen Dominick before that. Like, briefly, but no.
Q Despite not knowing them, did you receive wedding gifts from some of your father's guests?
A Yes.
MS. MERKL: Your Honor, at this time the government --
Q Ms. Cordero, I'm going to show what I have marked for identification as Government Exhibits 324, 325, 326, 327, 328, just as a group. What are these? Are those cards from your wedding?
A Yes.
Q You provided these to the government?
A Yes.
MS. MERKL: Your Honor, the government offers Government Exhibits 324, 325, 326, 327, and 328.
MR. GOLTZER: No objection.
THE COURT: The Government Exhibits 324 through 328?
MS. MERKL: 324 through 328, Your Honor.
THE COURT: Are accepted in evidence. Go ahead.
(Government Exhibits 324 through 328, received and marked in evidence)
Q Starting with Government Exhibit 324, can you read for

the jury what's written on this card?
A It says: Wishing you the very best in health and happiness.
Q Who is that from?
A Dominick, and the boys.
Q And do you know who wrote this notation?
A I did.
Q What does that represent?
A That means there was 1500 cash in the card.
Q Who is the Dominick in this card?
A Dominick Cicale.
Q I will now show you Government Exhibit 325. Can you read what's written on this card?
A It says: Dear Connie and Sam, best wishes for a happy and healthy life together. Love, Joseph and Jennifer Artuso (ph) so.
Q What does this notation represent?
A Three hundred cash.
Q Who wrote the 300 cash?
A I did.
Q Showing you what's been marked Government Exhibit 326. Do you recognize what's written up here?
A I believe it says: Frankie V and Frankie E.
Q Do you know the last names of those two Frankies?
A I don't know for sure. I think the last E was Esposito

but I'm not sure.
Q This notation over here?
A Five hundred cash.
Q Showing you next Government 327. What does it say on this portion of the card?
A It says: Congratulations Connie and Sam.
Q From?
A Bobby and Elmo, 600 cash.
Q Government Exhibit 328?
A Al Perna and Paula. Good luck.
Q And this notation here?
A Seven hundred.
Q Is that your handwriting?
A Yes.
Q Ms. Cordero, based on your observations what was the nature of the relationship between Dominick Cicale and your father during 2004?
A I thought they were friendly.
Q How did you arrive at that conclusion?
A Well, for one, he came to my wedding, and I know my husband had talked about, you know, seeing Dominick around.
MR. GOLTZER: Objection, Your Honor.
THE COURT: Sorry. Objection.
MR. GOLTZER: Talked about.
THE COURT: Sustained. Motion granted.

The jury will disregard the last answer.
Q You started to say he came to your wedding?
A He came to my wedding and also my father had said he wanted Dominick to be the godfather of his unborn daughter.
Q So in 2004 was your father expecting another baby?
A He was.
Q Who was he expecting that baby with?
A Roxanne.
Q And did Roxanne, in fact, have a baby in 2004?
A She did.
Q What was the baby's name?
A Gabriella.
Q When was Gabriella born?
A About three weeks before he died, on November 9th.
Q November 9, 2004?
A 2004.
Q Prior to Gabriella's birth was there a baby shower?
A Yes.
Q Did you attend?
A I did.
Q Approximately when was the baby shower for Gabriella?
A It was sometime in October of 04.
Q Where was the baby shower?
A It was in Astoria. It was like an Italian restaurant. I don't remember the name.

Q Did your father attend the baby shower?
A He did.
Q Did he attend the entire baby shower or a portion?
A A portion of the baby shower.
Q When did he get there?
A He got there a little after we started to open up the gifts.
Q Anything unusual happen at the baby shower?
A Yeah, he was just acting out of character a little bit.
Q In what way?
A He was carrying on. He was saying kind of insulting things to Roxanne's family and then he just didn't seem happy.
Q What was his overall demeanor at the baby shower?
A I guess a little preoccupied. He just -- he didn't look like himself. He looked like he had something on his mind. He looked like he was lashing out about something. He looked like something was bothering him and he was just kind of taking it out on whoever was around to listen.
Q Do you know whether your father had been drinking at the baby shower?
A My father?
Q Do you know whether your father had been blinking at the baby shower?
A Yes, he was.
Q Do you know where your father went after the baby shower?

A I don't.
Q Ms. Cordero, do you know whether your father was involved in criminal activity during his lifetime?
A Yes.
Q How do you know?
A Because growing up I used to go visit him in different jails that he was in during the years and you know, you could just kind of tell the company he kept.
Q Did you ever see your father with a gun?
A Yes.
Q When?
A On Halloween of 04.
Q Where did you see him with the gun?
A In his house.
Q Where was the gun?
A I can't remember. I want to say it I either I saw it holstered on the side of him or -- I -- I can't remember though. Either that or -- I don't know.
Q You previously testified that you last saw your father about a week before his death, did your father say anything unusual to you?
A He did.
Q What did he say?
MR. JASPER: Objection, Your Honor.
THE COURT: Let me have a side-bar before we

continue.

(The following took place at side bar)

THE COURT: How does this get in?

MS. MERKL: Your Honor, it's the decedent's then exiting mental state. She's not going to be implicating anyone in the comments that her father made. What he said to her is he would be checking out soon and than he was setting up a life insurance policy to take care of her, and the children. And he also stated that he had said some things and done some things that he can't take back, and the government feels that all of those statements are Mr. Pizzolo's then existing mental state or condition under 803 -- what is it five or six?

THE COURT: I will look.

MS. MERKL: And that they are admissible.

MR. JASPER: Objection. 403. They shouldn't be speculating about what it is he, that he was checking out. It's not probative to anything. It is more prejudicial than it is probative, plus the fact that it makes an --

MS. MERKL: It's not prejudicial to the defendant. The man was murdered after Mr. Basciano was in jail, knew his death was coming.

THE COURT: I will look.

(End of side-bar).

(Continued on next page).

(Open court).

MS. MERKL: 8033.

(Pause in the proceeding)

THE COURT: All right. The objection is overruled. You may ask your question again.

BY MS. MERKL:

Q Ms. Cordero, just to orient you, you said you saw your father about a week before his murder?

A Yes.

Q Did your father say anything to you at that time?

A He did.

Q What did he say?

A He said I just want you to know your father's checking out soon, and don't worry about it because I just took out a policy, and if anything happens to me, you and these two will be taken care of.

Q Your father said he was checking out soon, what did you understand him to mean?

A That he was going to die.

Q When he said "you and these two would be taken care of" what was he referring to?

A He said he had taken out a million dollar policy and that that would be, you know, our, I guess, financial security. If anything happened to him, that we would be taken care of.

Q Did your father state why he would be checking out soon?

A He said he did and said some things that he couldn't take back.
Q How did you find out about your father's death?
A I got a phone call from my uncle.
Q Where were you at the time?
A I was home.
Q Prior to hearing from your uncle had you been in contact with anyone else that day regarding your father's whereabouts?
A Roxanne had called me numerous times kind of frantic -- your father didn't come home last night, have you heard from him. And I called my husband, I asked him if he saw my father, and he said no, so -- and then I called my dad and he didn't pick up.
Q Did you attend your father's wake and funeral?
A I did.
Q Did you see anyone that we've been discussing at your father's wake and funeral?
A I saw Dominick.
Q After your father's murder did you recover any of his personal items?
A I did.
Q What did you recover?
A His jewelry. He had a watch, a bracelet a necklace, a cross and a ring.
Q Where did you recover those items?

A Over here in Brooklyn, it was like an NYPD place. I don't know.
Q Showing you what's in evidence as Government Exhibit 332, do you recognize that?
A Yes.
Q What is it?
A That was my father's pinky ring.
Q Also showing you Government Exhibit 333 in evidence, do you recognize what is depicted in that photograph?
A Yes. That was his chain and cross.
Q Ms. Cordero, how often did you see your father prior to his death?
A At least every week. Once or twice a week.
Q Were you close?
A Very close.
MS. MERKL: Ms. Cordero, I have nothing further at this time.
THE COURT: Mr. Jasper, cross-examination?
MR. JASPER: Yes, Your Honor.
CROSS EXAMINATION.
BY MR. JASPER:
Q Good afternoon, Ms. Cordero.
A Good afternoon.
Q I thin you told us you were born in Germany?
A Yes.

Q And that your dad was in the army?
A Yes.
Q He wasn't in the navy, he was in the army?
A He was in the army.
Q You told us that you were at the baby shower -- well withdrawn.
You told us that your father was in a bad mood. Was that at your wedding party -- wedding reception.
A I said at the baby shower.
MS. MERKL: Objection.
THE COURT: Sustained.
Q I'm sorry. Was it the baby shower that you said he was preoccupied?
A Yes.
Q Did it seem like he was in a bad mood?
A It didn't seem like he was in bad mood, no.
Q Had he been drinking?
A Yes.
Q Had he been drinking a lot?
A Define what you mean by "a lot."
Q Did he appear to be drunk?
A No, not drunk. A little tipsy but not drunk.
Q Do you know anybody named Frank Asatoro (ph)?
A No, I don't think I do.
Q Had you ever heard your father mention a name Johnny

Palazollo?
A Yes.
Q Had you ever heard your father mention the name Pauly Spina?
A No.
Q How about Jimmy the General, had you ever heard that name while your dad was alive?
A I heard him over the phone, and the only reason I remember the General is because I remember him saying it on the phone and I'm, like, I thought who is he talking about.
Q Had you ever heard your dad mention the name Big Lou?
A Yes.
Q You told us that you had visited your dad in different prison facilities; is that so?
A Yes.
Q Did you have any idea whether or not your father was a associated with organized crime?
A Did I have an idea, yes, I did.
Q That was for a number of years?
A Yes.
Q Approximately how many?
A Fifteen maybe.

(Continued on next page)

BY MR. JASPER:

Q Do you remember your father ever making any comments about the arrest of Vincent Basciano?

A Can you repeat that?

Q Do you ever remember your dad making any comments about the arrest of Vincent Basciano?

A I don't remember.

Q Do you remember being interviewed by an FBI agent around July 18 of 2008?

A I can't recall the exact date, but I was interviewed by numerous agents.

Q Do you ever remember discussing an incident where you and your father and your husband were seated at a table while your father had read about Vincent Basciano's arrest?

A I don't remember if it was about Vinny's arrest. I thought it was about Joe's arrest, because I remember seeing Joe's picture. But I remember about the event that you're talking about.

Q Do you remember dad at that time, around the time of Vincent Basciano's arrest, indicated to you that there could be trouble as a result of that?

MS. MERKL: Misstates the testimony.

THE COURT: Well, it's a new question. You may answer.

A Can you repeat that?

MR. JASPER: Your Honor can we have it read back.
THE COURT: Sure. Read back the question.
(Record read.)
MS. MERKL: Your Honor, it assumes a fact not in evidence.
MR. JASPER: The question was -- I'm sorry, your Honor.
THE COURT: Sustained.
Q Ms. Codero, would something refresh your recollection as to that incident about Mr. Basciano and what your father said about him during the time of his arrest?
A Would something?
Q Yes.
A What something? You want to show me something?
Q Yes, sure.
A Yes, sure.
MR. JASPER: Your Honor, 3500-CC-3, bottom of page one. May I approach, judge?
THE COURT: Yes.
(Pause.)
Q Thank you.
A Okay.
Q Ms. Codero, having read that document, has that refreshed your recollection?
A It does a bit. Still -- if that's what it says on the

paper, then maybe that what I'm thinking about what happened, maybe it was not Joe, maybe it was a prior -- maybe this was Vinny. But again I'm not 100 percent sure. If I said it, then, yeah, maybe it was not about Joe, it was about Vinny.

Q I want to be clear what it is --

A Was said?

Q -- was said that the arrest of Vincent Basciano, trouble might result from that?

A He held up the paper and he pointed at the article and he was like You see this. This is a lot of trouble for everybody. And he put the paper down.

Q Now, did you receive a phone call from Roxanne Roman after your father was killed?

A Yes.

Q Was that phone call -- did it have anything to do with recovering approximately $90,000?

A No.

Q Was there money that Roxanne had called you about?

A Roxanne never called me about any money, no.

Q Did she call your husband?

A Did she call my husband about money? I don't know. I don't think so. But I don't know.

Q You said you had seen your father with a gun?

A Yes.

Q On how many occasions was that, approximately?

A One that I can remember graphically, but that's all.
Q You've never met Vincent Basciano, is that right?
A No, I've never met him.
Q You've told us that you felt that your father was friendly with Dominick Cicale?
A Yes.
Q How many times had you met Dominick Cicale while your father was alive, approximately?
A Maybe like, I don't know, a handful of times.
Q Have you ever gone out with your father and Dominick Cicale?
A Not that I can recall right now.
Q And your father was in the construction business?
A Yes.
Q And did you visit him when he was working on a construction project in the Bronx in the fall of 2004?
A I don't remember the time frame. But I did visit the job site in the Bronx.
Q Your father told you that he had taken out an insurance policy?
A Yes.
Q Shortly before he died?
A Yes. He said I took out an insurance policy.
Q Do you know if he in fact ever actually did take out a policy?

A I heard that the day he was supposed to sign was like the day before he died.
Q Did your father, also, if you know -- was he trying to get an insurance policy as a result of a loan that he was trying to get?
A I don't know.
Q You weren't involved in his business at all at that time, correct?
A No.
Q But after he passed away did you become involved in A&P Realty?
A Yes.
Q In what way?
A I tried to, after he died, I tried to basically settle up all his affairs that were kind of -- his assets I should say and in doing so I did what I needed to do to kind of take over A&P so that I can get the deed transferred over to my name.
Q Did you have to sign checks in order to do that?
A To do the transfer? Well, there was some money involved. But I don't believe that I had to sign the checks in order for that specific event.
MR. JASPER: Your Honor, can I have one second?
THE COURT: Surely.
(Pause.)
Q Ms. Codero, you had mentioned that your father had

purchased some property in Florida?
A Yes.
Q Did he make trips to Florida regarding that property?
A I don't remember.
Q Do you know if he made a trip shortly after Mr. Basciano's arrest in Florida?
A Yes. I do think he took a trip to Florida.
Q After Mr. Basciano's arrest?
A I don't know. I don't know when he was arrested.
Q And he was trying to develop the property in Florida, is that correct?
A From my understanding, it was like a block of lots that were just land and what they wanted to do -- the idea was to go out there and develop on the land and then I guess, you know, resell it.
Q Do you know if he had planned on going down to Florida to supervise those projects?
A The projects never got underway. But do I know if he planned that? Yeah. He had mentioned that. He had actually mentioned to myself and my husband one day, listen, why don't we all move to Florida, think about getting some jobs out there, you can help me and we'll run a business. Like my dad was full of big plans. So.
MR. JASPER: Thank you, ma'am.
THE COURT: Anything further from the government?

MS. MERKL: No, your Honor.

THE COURT: Very well. The witness is excused. You may stand down.

(Witness excused.)

THE COURT: All right. The government may call its next witness.

MS. ARGENTIERI: The government calls Walter Obando.

W A L T E R O B A N D O,

having been duly sworn was examined and

testified as follows:

THE CLERK: State your name and spell it, please.

THE WITNESS: Walter Obando, O B A N D O.

THE COURT: You may inquire.

DIRECT EXAMINATION

BY MS. ARGENTIERI:

Q Good afternoon.

A Good afternoon.

Q Where do you work?

A I work for the federal Bureau of Prisons at the Metropolitan Detention Center in Brooklyn New York.

Q Is that sometimes referred to as the MDC?

A Yes.

Q Is that part of the Bureau of Prisons?

A Yes.

Q What is it?

A It's a Federal Bureau of Prisons correctional facility.
Q What do you do for the MDC?
A I work in the office of special investigations.
Q What is your title?
A Special investigative technician.
Q What are your responsibilities?
A In the office of the special investigations we conduct investigations regarding inmate misconduct, such as fights, assaults, introduction of contraband. We monitor the inmates, randomly monitor the inmates' phone conversations. We monitor the incoming and outgoing mail and we fulfill subpoenas requested by outside law enforcement agencies.
Q Have you responded to subpoenas that were issued in connection with this case?
A Yes.
MS. ARGENTIERI: Your Honor, may I approach.
THE COURT: Yes, you may.
Q I'm showing the witness what's been marked for identification as Government's Exhibits 101, 102, 103, 106, 108, 109, 110, 111, 112, 113, 114, 115, 116, 135, 136 and then 139?
Sir, have you had the opportunity to review these exhibits prior to your testimony here today.
A Yes, I have.
Q And are all of these records maintained in the ordinary

course of business at the MDC?
A Yes.
Q And are they fair and accurate representation of the records as they exist at the MDC?
A Yes.
MS. ARGENTIERI: The government moves to admit them.
MR. JASPER: No objection, your Honor.
THE COURT: All right. Government's Exhibits 101, 102, 103, 106, 108, 109, 110, 111, 112, 113, 114, 115, 116, 135, 136 and 139 are received in evidence.
(So marked.)
MS. ARGENTIERI: Judge, I'm going to publish them to the jury and to the witness.
THE COURT: Very well.
Q Looking first at Government's Exhibit 111, sir, what do these records relate to?
A Vincent Basciano.
Q And next to the defendant's name, there's a register number, 30694054. What is the register number?
A The register number is an eight digit U.S. marshal number that's a signed to each individual inmate.
Q And each time an inmate comes into the prison system do they get a new number?
A No.
Q So it's the same number?

A Yes.
Q Looking at page three of this exhibit, it's written here the name Angela Basciano?
A Yes.
Q And does it indicate that that is Vincent Basciano's wife?
A Yes.
Q And that her address is the following -- can you read that?
A 146 Revere Avenue, Bronx, New York, 10465.
Q Can you explain to the jury what are out-count records?
A Out-count records are records that the Bureau of Prisons maintains in order to account for inmates in case of a count. What I mean by a count is the Bureau of Prisons conducts counts at all their facilities to basically account for the inmates. Basically, we conduct counts several times a day, seven days a week.
Q That's to make sure no one has escaped or gone missing?
A Yes.
Q Do you count during the day?
A Yes.
Q And at night?
A Yes.
Q So if an inmate -- what is the purpose of the out-count record?

A Basically the purpose of an out-count is -- an example, if an inmate goes to an outside hospital, if he goes inside the visit room and has a visit with his attorney and things of that nature. So basically if there's a count, a prime example, if we do a count at four p.m., okay. We're counting. There's supposed to be 120 inmates in the assigned housing unit. You two of the inmates inside a visiting room. Those two inmates would be on the out-count. So when you are actually counting the bodies inside the housing unit, you will count 118 minus the two that are in the visiting room.

Q It's to make sure the number is accurate, is that right?

A Yes.

Q I'm going to point your attention to Government's Exhibit 112 in evidence. Now, what inmate do these records relate to?

A Joseph Massino.

Q Next to his name, that's his unique register number?

A Yes.

Q Looking at the out-count records for Joseph Massino, where was Joseph Massino on November 21, 2004 between 10:56 a.m. and 13:39 p.m.?

A He was in the west visiting room in MDC Brooklyn.

Q What goes on in the west visiting room of the MDC?

A The west visiting room basically have social and attorney visiting that goes on in that area.

Q Do those visits occur in the same place in the visiting

room?
A Yes.
Q Is the room somehow divided?
A Yes. Basically inside the west visiting room, we have a common area which the social visitors could come and visit the inmates. You have booths that the attorneys can have visits with their clients.
Q If you are in the MDC, to get to the booth, do you have to walk through the social visiting area?
A Yes.
Q And when inmates are within that room moving around, do they have the opportunity to speak to one another?
MR. JASPER: Objection.
A Yes.
THE COURT: Sustained as to form.
Q Inside the visiting room, is it possible for inmates to see each other?
A Yes.
Q So during the social visits how are they conducted, are there tables?
A No, there are chairs.
Q There are chairs?
A Yes.
Q How are the chairs grouped?
A Basically the chairs are lined up right next to each

other. You can have the visitors, friends and family are sitting next to the inmate.

Q Turning to Government's Exhibit 102, what is this?

A This is basically a copy of the front of the log, of the west attorney log.

Q You said that inmates could have visits. Are there two types of visits?

A Yes.

Q What kind of visits are they?

A Social visits and attorney visits.

Q In order to get into the MDC for a social or legal visit what does a visitor have to do?

A As far as the social visits are concerned, an inmate can put up to one friend on his visitor list and he can then put his immediate family such as parents, siblings, children. As far as the attorneys are concerned, the attorneys don't have to fill out a form. Basically they just show up to the institution, announce themselves to the front lobby officer and basically fill out the attorney log book and fill out a notification of visitor form.

Q Do both legal visits or social visits have to sign into a log?

A Yes.

Q Is there a separate log for each type of visit?

A Yes.

Q This is the attorney log book for a time period beginning November 17, 2004, is that correct?
A Yes.
Q Now, we just looked at a record that indicated that on November 21, 2004, Joseph Massino was in the west visiting room?
A Yes.
Q Directing your attention to November 21 2004, and to the entry -- actually directing your attention to the entry that I'm touching. What does that indicate?
A There was a visit conducted by a person by the name of Juliano.
Q Who was that person visiting?
A Massino.
Q And is Massino's register number right next to that?
A Yes.
Q What time does this log indicate that visit started?
A Looks like 9:30 a.m.
Q What time does it indicate it ended?
A Eleven a.m.
Q On November 21, looking at this entry that I am highlighting, what inmate received a visit?
A Inmate Basciano.
Q Who was visiting inmate Basciano on November 21?
A Brafman.

Q Brafman?
A Yes.
Q Is this then Basciano's register number over here?
A Yes.
Q What time did his visit start?
A 9:40.
Q What time did it go to?
A Eleven.
Q Both he and Massino were in the west visiting room at the same time?
A Yes.
Q Just to go back a day in the attorney visiting log, this is again Government's Exhibit 102, looking at the entries for November 20, do you see this line here, that I am indicating?
A Yes.
Q Can you read what that says?
A It says a visit for inmate Basciano.
Q Does it indicate Lee in the attorney line?
A Yes.
MR. JASPER: I object to the leading.
THE COURT: Sustained.
Q What does it say on the attorney line?
A It says Lee.
Q Okay. Does it indicate what time that started? Can you read that?

A Looks like 8:30.
Q Going back to the records for inmate Joseph Massino, what do these records indicate about where Joseph Massino was on November 23, 2004 between 8:44 and 17:54?
A Basically, it says that he was keyed out to court at Eastern District.
Q Where is the courthouse in the Eastern District?
A Here.
Q Are we sitting in it?
A Yes.
Q And it indicates that he was gone between 8:44 a.m. and 17:54 p.m., is that correct?
A Yes.
Q Going to Government's Exhibit 111, you have indicated prior that these were the records for Vincent Basciano?
A Yes.
Q The last page of the exhibit, are these the out-count records for Mr. Basciano?
A Yes.
Q According to these records where was Vincent Basciano on November 23, 2004?
A He was keyed out to court, Eastern District.
Q And between 8:44 and 12:54 p.m.?
A Yes.
Q Or 17:54 p.m.

A Yes.
Q How are prisoners transported to the courthouse?
A They are transported by the U.S. Marshals Service.
Q This is the same place and time as Mr. Massino, is that correct?
A Excuse me.
Q This was at the same time as Mr. Massino, is that correct?
A Yes.
Q Looking at Mr. Basciano's out-count records, again, for December 3, 2004, where does that indicate that he was between 15:48 and 18:06?
A He was in the west visiting room.
Q Now, looking at Mr. Massino's records for that same day, where was he between -- on December 3 between 15:48 and 18:06?
A He was inside the west visiting room.
Q So they were there at the same time?
A Yes.
Q Now, looking at Government's Exhibit 101, what is this?
A That's a request for a codefendant meeting.
Q What's a codefendant meeting?
A A codefendant meeting means all the defendants in the case that are meeting together with the attorneys, paralegals or investigators.
Q Where are codefendant meetings held within the MDC?

A Normally they are held inside the west visiting room.
Q Is December 3, by the way, the same date that we just looked out the out-count records for Massino and Basciano?
A Yes.
Q Were they in the west visiting room?
A Yes.
Q So what was the date for this request?
A It's December 3, 2004.
Q And who are the inmates that were listed on this request?
A Joseph Massino, Patrick Defilippo, John Spirito, Vincent Basciano and Joseph Anthony Donato.
Q And can you just read the paragraph below that?
A Be advised the above-referenced inmates have been approved to attend a codefendant meeting on Friday, December 3, 2004, at 2:30 p.m. please be advised a separatee order in place between the above-referenced inmates does not apply to meeting with counsel. The following individuals have been approved to attend this meeting.
Q And then there was a list of lawyers?
A Yes.
Q And to the right of the lawyers' names, what are these names listed in parenthesis?
A Those are the inmates.
Q Does this indicate who Thomas Lee was associated with?
A Yes.

Q Who?
A Donato.
Q And he was approved to attend this codefendant meeting?
A Yes.
Q And then looking down here, who are these people that are listed?
A Those are the private investigators.
Q What's the top name?
A Victor Juliano.
Q Now, you testified that in order to get into the facilities these lawyers and the investigators all have to sign a log and we looked at that log, right?
A Yes.
Q Back to Government's Exhibit 102. Looking at these entries for December 3, starting with this line, can you read the name in the attorney box there for December 3? I'm sorry. Let me zoom in and make it easier.
A Looks like the name Edward.
Q And then there are a list of inmates that just appeared on that request for a codefendant meeting?
A Yes.
Q And then under Edward what is this name?
A Lee.
Q And a list of inmates that he's visiting?
A Yes.

EXAMINATION CONTINUES

BY MS. ARGENTIERI:

Q What are quarters records?

A Quarter records are basically records that are maintained by the BOP to track an inmate's whereabouts to basically see where these inmates were housed at.

Q Do quarters records indicate the facility, for example, the inmate would be housed in?

A Yes, and his bunk and cell assignment.

Q Is each facility divided into areas or units?

A Yes.

Q In the MDC, does each unit, other than the Special Housing Unit, have an upper level and a bottom level?

A Yes.

Q Showing you Government Exhibit 111.

What types of records are these?

A Those are the quarters history for inmate Vincent Basciano.

Q Now directing your attention to 2004.

Can you tell when Vincent Basciano was first admitted to the MDC?

I have to zoom out a bit for you to do that.

A Initially entered the MDC on November 19, 2004.

Q And --

MR. JASPER: Excuse me, Your Honor.

What exhibit is that?

MS. ARGENTIERI: It's Government Exhibit 111.

Q Okay. How can you tell that it was the MDC that he entered that day?

A Each -- as far as the -- as far as the quarters records, the institution or the facility is broken down in a three letter designation. B-R-O stands for Brooklyn, MDC Brooklyn.

Q Where it says Brooklyn here?

A Yes.

Q You can tell that's the MDC?

A Yes.

Q Then over here does this indicate where he was housed on a specific date?

A Yes.

Q Directing your attention to the period between December 29th and February 4, 2005, which I believe is this line right over here.

A Yes.

Q Where was the defendant Basciano housed within the MDC?

A He was housed in Z 07-913 U AD. U stands for upper bed and AD stands for administrative detention. That designation is for the West Special Housing Unit.

Q When you say Special Housing Unit, is that referred to as the SHU?

A Yes.

Q Is the SHU set up differently than the other units in the facility?
A Yes.
Q How is the SHU set up?
A Basically, the SHU is what you call segregation. Inmates there that are there for protective custody, that are awaiting investigation for an infraction that is committed within the facility, inmates that are deemed a security concern, that they have to be housed by themselves or with another inmate in what they call lockdown status.
Q Are there two sides to the SHU?
A Yes.
Q From this, can you tell what side Mr. Basciano was in-between December 29 and February 4th?
A He was in -- basically, the SHU is divided into what we call range one and range two. Z 07 is commonly referred to as range two.
Q What side of the SHU is that?
A The right side as you are coming in.
Q Now looking at the inmate record for Mr. Massino.
Where was Mr. Massino housed between December 29, 2004 and January 13, 2005?
A He was in Z 07-901 L AD. Of course, L is for lower bunk, AD stands for administrative detention. Basically, he was in the West Special Housing Unit.

Q And just prior to that, in the time period November 29, 2004 and December 29, 2004, was he within the same range of the Special Housing Unit?
A Yes.
Q But just a different bunk?
A Different cell.
Q So the -- Z 7-901, where would he have been held compared to where Mr. Basciano was in that same time period?
A Well, if you look at the cell assignments, which -- Basciano was in cell number -- I'm sorry -- excuse me. He was in 913 and Massino was in cell one. So basically they were 12 cells away from each other.
Q Is it an open area in there?
A Basically, it's kind of an L-shaped, where you have cells numbered one through 30 and in-between the L-shape you have the, what you call recreation decks, where the inmates exercise.
Q Looking back at Mr. Massino's housing records, where do these records indicate that he was housed between January -- January 22, 2004, -- this is Government Exhibit 112 for the record -- between January 22, 2004 and September 21, 2004?
A He was in unit G 03-432 lower, means lower bunk. G 03 is more commonly referred to -- it is called a G 42 unit on the fourth floor of the MDC.
Q Looking at Government Exhibit 106.

Who are these records -- who do these record relate to?

A Anthony Indelicato.

Q Where was Anthony Indelicato housed between February 6, 2004?

A He was assigned to G 03-406 upper, which, again, it's the unit G 42 on the fourth floor of the MDC.

Q Okay. There was some overlap.

A Yes.

Q Now, within -- if -- if two inmates are assigned to G 42 on the same side, what type of access do they have to one another?

MR. JASPER: Objection.

THE COURT: Sustained.

Q What does it look like within the unit?

A Basically, you have --

MR. JASPER: Objection, Your Honor; the form, look like?

THE COURT: Sustained.

Q Please describe the inside of the unit.

A Basically you have two tiers inside the normal housing unit. You have what you call the upper tier and a bottom tier. Each tier contains 30 cells, which contains two inmates per cell for a total population inside of a housing unit of 120 inmates. The inmates are locked down between hours of

10:00 pm and 6:00 am. Between the hours of 6:00 am and 10:00 pm, the inmates have access, with exclusion of the count times, which they have to be locked in their cells, the inmates have access to the common area and the kitchen and the recreation deck and activity -- activity room, normally -- known as religious room and also another television room that you have access to.

Q So all of the inmates housed within that part of the unit have access to all the common spaces?

A Yes.

Q Do they also have access to other people's cells?

A Yes.

Q Now looking back at Mr. Basciano's records, where was Mr. Basciano housed between -- Government Exhibit 111 -- between November 30, 2004 and December 21, 2004?

A He was housed in unit I 01-623 lower, commonly referred to as unit I 61 on the sixth floor of the MDC.

Q Showing you Government Exhibit 113.

What inmate do these records relate to?

A Generoso Barbieri.

Q Looking at the highlighted entry, where was Mr. Barbieri housed between February 18, 2004 and February -- and February 18, 2005?

A He was housed in unit I 01-615 upper, which is the most commonly referred to as unit I 61 on the sixth floor of the

MDC.

Q If Basciano was there between November 30, 2004 and December 21, 2004, some time period overlapped, is that correct?

A Yes.

Q When Mr. Basciano was housed at bed 623 lower and Mr. Barbieri was housed at 615 upper, can you explain where those beds are in relation to each other?

A Basically, they -- you are looking at the designation, it's on the same tier. And, basically, from 615 through the other cell, they are basically almost right next to each other.

Q Within that unit they would also share common areas as you testified?

A Yes, yes.

Q Showing you Government Exhibit 103 in evidence.

What is this?

A It's a copy of the West visitor's sign-in logbook.

Q For the MDC?

A Yes.

Q And does it indicate on the front cover what time period this deals with?

A From September 23rd through December 28th.

Q Directing your attention to December 6th. I am going to have to zoom in for you here.

Does this indicate that Mr. Basciano received a visit?

A Yes.

Q Who visited Mr. Basciano on that day?

A According to the names here, it's Angela Basciano and Vincent Basciano.

Q Now directing your attention to December 13th.

Does this indicate that Mr. Basciano received a visit that day?

A Yes.

Q From who?

A Angela Basciano and Vincent Basciano.

Q Directing your attention to December 30th.

Did Mr. Basciano receive visitors there day?

A Yes.

Q From who?

A Vincent Basciano, Joseph Basciano, Steven Basciano and Angela Basciano.

Q I'm sorry. I believe I misread that.

December 20th, can you read it? I will just zoom in.

Does that say December 20th?

A Yes.

Q Finally, directing your attention to December 27th.

Did Mr. Basciano receive a visit that day?

A Yes.
Q From who?
A Angela Basciano and Vincent Basciano.
Q The front of this is a little cut off but this is the logbook for 2004, correct?
A Yes.
Q That's Government Exhibit 103.
Now I am going to show you Government Exhibit 108.
Are these quarters records?
A Yes.
Q For who?
A Inmate James Tartaglione.
Q And where was Mr. Tartaglione in prison between 1999 and 2001?
A He was at FCI Fort Dix.
Q Between June 12, 2000 and June 23, 2000, he was in the housing unit R, range three?
A Yes.
Q Showing -- directing your attention to Government Exhibit 109.
What inmate do these records relate to?
A Inmate Robert John Van Zandt.
Q Do these records indicate where Mr. Van Zandt was in prison between 1999 and 2000?
A Yes.

Q Between April 11, 2000 and July 20, 2000, these two entries here, what do -- where do these records indicate that Mr. Van Zandt was housed within Fort Dix?

A Basically, he was in R 03-394,and 331 L.

Q That's housing unit R, range three?

A Yes.

Q Directing your attention to Government Exhibit 110.

What inmate do these records relate to?

A Patrick DeFilippo.

Q Are these quarters records of Mr. DeFilippo?

A Yes.

Q Where do these records indicate that Mr. DeFilippo was housed between July 2, 2004 and March 6, 2000 -- and May 6th, excuse me, 2005?

A He was housed at unit I 01-603, lower, commonly referred to as the I-61 unit located on the sixth floor of the MDC.

Q He was on the sixth floor of the MDC in bed 603; is that correct?

A Yes.

Q Looking at Government Exhibit 11, Mr. Basciano's records.

Between November 30, 2004 and December 21, 2004, where was Mr. Basciano housed?

A He was in I-01-623.

Q There was some overlap between him being -- Mr. Basciano being in I 42 and Mr. DeFilippo being in I 42?

A Yes.
Q If Mr. DeFilippo was in bed 603 and Mr. Basciano was in bed 623, how close would they have been together?
A Basically, those cells are basically kind of right across from each other.
Q I'm sorry. I didn't hear your last answer.
A Those cells, if he was in 603 and -- excuse me -- if DeFillipo was in cell 603 and Basciano was in 623, those cells were basically adjacent, right across from each other.
Q They were both on the sixth floor?
A Yes.
Q Okay. Now directing your attention to Government Exhibit 114.
What inmate do these records relate to?
A Dominick Cicale.
Q Looking at this page, when was Mr. Cicale -- when was Mr. Cicale first brought into the MDC in 2005?
A It was -- excuse me -- January 27, 2005.
Q Looking at these records, was Mr. Cicale previously incarcerated at a prison facility in Allenwood?
A Yes.
Q How can you tell that?
A By the three letter designation AL-M, stands for Allenwood medium.
Q When was Mr. Cicale in prison in Allenwood medium?

A Eleven -- excuse me -- November 14, 1994 through April 13, 1995.

Q LookingLOOK at Government Exhibit 106.

Was Mr. -- these record relate to Mr. Indelicato; is that correct?

A Yes.

Q Anthony Indelicato?

A Yes.

Q When, if ever, was he held at Allenwood medium?

A If you move it a little bit more to the right.

He was in Allenwood from December 20, 1993 through approximately April -- April 1st of 1998.

Q Now, in April 1st of 1998, after that, does it indicate whether he held in federal custody?

A No.

Q When do these records indicate that Mr. Indelicato reentered federal prison?

A Basically, July 17, 2001, he was brought to MDC Brooklyn.

Q That's right here?

A Yes.

Q And then did he remain, according to these records, in federal custody?

A Yes, until September 28th of 2001.

Q If you look at the prior page, does it look like he was incarcerated until March 15, 2002?

A Yes.
Q Going back to Dominick Cicale's record.
Do these records indicate whether he was ever housed at a federal facility in Fariton?
A Yes.
Q On this page, what does it indicate about when Mr. Cicale was housed in Fariton?
A Basically, you are looking at June 4, 1996 through September 30, 1996.
Q Okay. And looking at the prior page, does that also indicate additional time in Fariton?
A Yes.
Q Between when and when?
A June 30, 1995.
Q How can you tell that Mr. Cicale was incarcerated at FCI Fariton?
A Fariton is the three letter designation F-A-I.
Q F-A-I?
A Yes.
Q Okay. So between 1995 and 1996, it appears that Mr. Cicale was incarcerated at FCI Fariton; is that correct?
A Yes.
Q Showing you Government Exhibit 115.
What are these records?
A These are records of an employee file for an employee by

the name of Iris Serrano.
Q Where do these records indicate that Ms. Serrano was employed?
A Down at the bottom left-hand corner, where it says FCI Fariton, P.O. Box 280, Fariton, New Jersey.
Q That's the same Fariton that you were just testifying about?
A Yes.
Q Federal facility?
A Yes.
Q And here line four, what does it say?
A It says she resigned on January 25th of 1997.
Q Looking at the last page of this document, does it indicate the reason for her resignation?
A Personal reasons.
Q Showing you Government Exhibit 135.
Who do these records relate to?
A Inmate Lewis Louis Kazman.
Q What do these records indicate where Mr. Lewis Kazman was in federal custody?
A Between January 17, 1995 through July 14, 1995, he was assigned to USP Lewisberg camp.
Q How can you tell it's Lewisberg?
A Lewisberg, three letter designation L-E-W.
Q Looking at Government Exhibit 136.

Who do these records relate to?
A Inmate Randolph Pellozo.
Q Does that say Pizzolo?
A Pizzolo. Excuse me.
Q When, if ever, was Mr. Pizzolo incarcerated in FCI Lewisberg?
A September 12, 1994 through July 28, 1995.
Q Where was -- where within Lewisberg was he incarcerated?
A He was incarcerated at the camp.
MS. ARGENTIERI: I have no further questions.
THE COURT: Cross-examination.
CROSS-EXAMINATION
BY MR. JASPER:
Q Mr. Obando, you have been working for the Bureau of Prisons for how long?
A Fourteen years.
Q How long have you been at MDC?
A Fourteen years.
Q The whole time?
A Yes.
Q And you are a Special Technician?
A Yes.
Q You are in charge of records?
A Basically, I am custodian of records.
Q Custodian of records?

A Yes.
Q These records that the government -- that the prosecutor asked you about, you have reviewed these before your appearance here in court, correct?
A Yes.
Q Many times?
A Maybe two, three times.
Q Recently?
A Yes.
Q Now, regarding Mr. Basciano's quarter records, can you tell us when he first arrived at MDC in Brooklyn?
A I have to look at the --
Q Yes, sir.
A Looks like he arrived MDC, looks like November 19, 2004.
Q Approximately what time of the day or night?
A 8:06 pm.
THE COURT: I'm sorry. Which exhibit are you referring to there?
THE WITNESS: Exhibit 111.
THE COURT: All right. Go ahead.
Q Exhibit 111.
Now, 111 are the quarter records of Mr. Basciano?
A Yes.
Q And he arrived at Metropolitan Detention Center November 19, 2004?

A Yes.
Q At approximately what time, sir?
A 8:06.
Q When he first arrived there, is he in a unit called R and D?
A That's what we call Receiving and Discharge.
Q Receiving and Discharge, is that R and D?
A Yes.
Q How long was he in R and D?
A According to this, it says he was there from 8:06 pm through 11:41 pm.
Q Where does he go after R and D?
A Well, they assigned him to unit K 07-803.
Q What date do they assign him that?
A Basically, that same day. He was keyed. So when they key him out of Receiving and Discharge, they keyed him into that unit.
Q In that unit, is that still a unit with people who are recently arrived?
A Well, back then -- we are going back almost seven years ago. So I don't really know what the policy was then because KD-4 sometimes is used as an intake unit which inmates go to that unit and they stay there for a certain particular time until they get a medical assessment by the duty physician in order to clear them to go to a general population unit.

Q They have to be cleared to make sure they don't have some communicable disease, like tuberculosis, something like that?
A Yes.
Q That happens routinely, correct?
A Yes.
Q That has to be done so that nobody spreads any communicable diseases, right?
A Yes.
MS. ARGENTIERI: Objection; relevance.
THE COURT: Sustained.
Q Now, you don't know as you sit here today how long Mr. Basciano was in Receiving and Discharge back in 2004?
A Well, like I says, if you look at the -- at the quarters history, it says he was received at 8:06. So approximately what, almost three hours later, four hours later, he was taken upstairs to the unit KD-4 -- KO-7.
Q K what?
A KO-7, which is commonly referred as K 84 unit, on the eighth floor.
Q That unit, is that where one would have an assessment of their medical condition?
A Well, like I says, it was a very long time ago so I am not sure back then what they used to do as far as because normally they used to use the intake unit as the G unit, G-01, the G-41 unit. They use -- they use the KD-4 unit. So I

don't know if it was for intake purposes.

Like I says, it happened a long time ago. I can't recall.

Q How long does the intake process take?

A It take a couple of days. It could take a couple of weeks.

Q How long does the medical assessment take?

A It could take a couple of days. It could take a couple of weeks. It depends on the medical department. I don't run the medical department so I can't really tell you how they run their business down there.

Q Looking at Mr. Basciano's quarter records, can you tell us when he arrives in 1-61 -- I-61?

A November 30, 2004, at approximately 6:15.

Q I'm sorry, sir. What time?

A 6:15.

THE COURT: PM?

THE WITNESS: PM.

Q 6:15 pm, November?

A Yes.

Q So November 30th he arrives in that unit I 61, correct?

A Yes.

Q That is the same unit where Generoso Barbieri is located, you testified earlier?

A If I recall, yes.

Q Now, during the period November 19, 2004 until November 30, 2004, as best you can tell from those records, Mr. Basciano has no social visits, correct?
A Like I said, an inmate needs to submit a visiting form in order to get visitors.
Q That takes time, doesn't it?
A Yes, it does.
Q So what happens is, once the inmate arrives at a facility, he receives some forms, correct?
A Yes.
Q And those forms have to be mailed out, right?
A Yes.
Q They have to be mailed out to the people who he's going to request to have on his visiting list, right?
A Yes.
Q And then once those individuals receive that, they have to fill out some information on there, correct?
A Yes.
Q Because the BOP wants to know who is coming in socially to visit an inmate, right?
A Yes.
Q And then that visitor has to send that back to the Bureau of Prisons, correct?
A Yes.
Q And then at that point the Bureau of Prisons is vetting

or checking out the people, correct?
A Well, if it's immediate family, we don't conduct NCIC checks. If it is a friend, we will run an NCIC check to ascertain if this individual is a convicted felon.
Q And NCIC check, for the jury, is what, sir?
A It is basically what you call a -- a check if an individual has a criminal record or if the individual is a wanted person.
Q Or wanted person?
A Yes.
Q But a family member who has the same last name as an inmate, they are processed quicker, correct?
A Yes.
Q But the form guess out to the family member, family member fills it out and the form is then sent back, right?
A Yes.
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Now, can you tell us, sir, when Mr. Basciano's first social visit occurs, based upon those records? I think Exhibit 103.
A Looks like December 6th.
(Continued on next page.)

BY MR. JASPER:

Q December 6th is the first social visit, correct?

A Yes.

Q And that's Angela and Vinny Basciano Junior?

A Yes.

Q And then the next social visit occurs on December 13th; is that correct?

A Yes.

Q And who was that?

A That's Angela and Vincent Basciano.

Q And the next social visit after that is December 20th?

A Yes.

Q And who was that?

A Excuse me. That's Vincent, Joseph, Steven an Angela Basciano.

Q And those are all Bascianos?

A Yes.

Q And just -- that's Steven Basciano, Vincent Basciano Junior?

MR. JASPER: Is examine something.

A It doesn't say Junior on there.

Q But it says Vincent Basciano?

A Yes.

Q And it's not the Vincent Basciano would is the intimate, correct?

A No.
Q And then there is another social visit on December 27th?
A Yes.
Q Now, the first attorney visit occurs -- do you have the attorney logged in front of you; is that Exhibit 102?
A Yes.
Q That's an attorney log, that book was opened on November 17th, 2004?
A Yes.
Q That attorney log, that's a book that is behind the front desk in the west lobby, correct?
A Yes.
Q Attorneys come there and they sign that, right?
A Yes.
Q And they provide information, they have to show their attorney -- their bar card, right?
A Yes.
Q And then they get keys to the locker, right?
A Yes.
Q Now the first attorney that visits Mr. Basciano, is that on a November 20th?
A Yeah, it is.
Q That's 2004.
A Yes.
Q That is a Mr. Lee?

A Yes.
Q And then there is another attorney who visits Mr. Basciano on November 21st, I think you told us?
A Yes.
Q Is that Mr. Brafman?
A Yes.
Q Now, the visiting room in the west lobby of MDC, there are social visits and legal visits that occur in that room?
A Yes, and they can occur at the same time.
Q That's a very large room, sir?
A Yes.
Q With literally hundred of people in the social area?
A I won't say hundreds; maybe dozens.
Q Up to about a hundred?
A Probably, yes.
Q The attorneys, when they have their visits with their clients, they're not out there with the social visitors, are they?
A No, they are inside the booth.
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Where are the legal visits taking place in that west lobby?
A They'd be conducted inside a booth.
Q Booths?

A Yes.
Q With glass doors?
A Yes.
Q And windows?
A Yes.
Q And that's so that the attorneys can speak privately with their clients?
A Yes, sir.
Q And the social visitors are not -- are outside in that common area, right?
A Yes.
Q Now, when attorneys come down to visit -- you've been working the MDC 14 years, I think you told us?
A Yes.
Q When attorneys come down to visit a client, they're not supposed to speak to anybody other than that client, correct?
MS. ARGENTIERI: Objection.
Q If you know?
THE COURT: Sustained.
Q Do you know if that's a rule?
A Well, it is common practice not allowing the attorneys to be speaking to other intimates other than their client.
Q And when they come into that visiting room there's an office in the VR, that's what it's called, VR?
A Yes.

Q And then there's a form that they have to hand to the officer, right?
A Yes, notification of visit form.
Q Title 18, right?
A Yes.
Q And that's form that they have to fill out where they put the registry number, right?
A Yes.
Q And that's the only intimate they were supposed be speaking to, right?
A Yes.
Q And there's several guard who are watching over all of the social visits, right?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q Are there corrections officers in the visiting room observing what's going on?
A Yes, normally there's a at least two to four officers inside the west visiting.
Q And do those officers try to prevent unauthorized communication?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q What's the purpose of those officers who are standing in that area, in the visiting room?

A To maintain order and discipline in the visiting room and basically to prevent any type of contraband being passed by attorneys or social visitors to the intimates.

Q And are they also supposed to prevent, if they can, unauthorized communication?

A Yes.

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q Is unauthorized communication between an attorney and an intimate who he is not visiting who is not his client a concern for security of the institution?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q Now, you told us that there was a codefendant's meeting on December 3rd. I think that's Exhibit 101?

A Yes.

Q Do you have that in front of you?

A Yes.

Q Now, before a codefendant's meeting can be arranged the attorneys have to seek permission from the legal department; is that true?

A Yes. They have to send a written request to the legal department for a meeting with their clients?

Q And they have to list the names of the people who are going to be there?

A Yes.
Q The codefendants, right?
A Yes.
Q And in order to do that they -- usually an attorney or the attorneys have to fax the front of the indictment to the legal --
MS. ARGENTIERI: Objection.

THE COURT: Sustained.
Q The attorneys have to indicate the registration numbers of the people who are going to be present at the meeting?
A Yes.
Q And what's the purpose of that?
A Basically because each individual intimate has his own register number. Some men have common names such as a prime example you can have a guy named Jose Sanchez, you might have four or five Jose SAncehz, you might have four or five Robert Williams.
Q But a codefendant's meeting has to have what they call a memo?
A Yes.
Q That's what they call it, right?
A Yes.
Q And without that memo at the front desk that attorney is not going to get into that codefendant's meeting?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q If you know?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

MR. JASPER: As to form Your Honor.

THE COURT: Sustained as to -- there's no foundation for this witness to provide this evidence.

Q Are you familiar with the -- you've been working there for 14 years?

A Yes.

Q And are you familiar with what an attorney has to do to set up a codefendant meeting?

A Yes, from my experience working in SIS department for the last 11 year.

Q What does an attorney have do in order to set up a codefendant meeting?

A Basically he has to fax over a request to the legal indictment, and he has to fax the indictment, which lists all the codefendants that are supposed to be at the codefendant meeting, indicate a date and time, and list all the participants which, of course, all the codefendants, the attorneys, paralegals, or private investigators, and they have to give at least 24 hour advance notice to the legal department?

Q At least 24 advance notice, right?
A Yes.
Q Now, can you take a look at Government Exhibit 101.
Does that seem to fill out the requirement as you understand it for a codefendant's meeting?
A Yes.
Q Now, being in charge of records as the special technician at MDC before inmates can make a telephone call do they have to have a pin number?
A Yes.
Q What's a pin number?
MS. ARGENTIERI: Objection; outside the scope.
THE COURT: Yes, it is.
MR. JASPER: Can I adopt this witness for this purpose or we can call him back later.
THE COURT: No, we are moving right along here.
Q Well, can I ask you this, sir, do you know if all of the phone calls at MDC made by intimates are monitored?
A Yes. Randomly monitored.
Q I'm sorry?
A Randomly monitored.
Q Recordings are made?
A Recordings are made and stored for a period of 180 days.
Q Recordings are made and kept for a period of 100 days?
A One hundred eighty days. Six months.

Q One hundred eighty days.

And have you ever had U.S. Attorneys Office make a request to preserve those telephone tapes?

MS. ARGENTIERI: Objection.

THE COURT: Sustained.

Q You mentioned the Special Housing Unit, where is that located at MDC?

A On the ninth floor of the MDC.

Q And do intimates usually have roommates up there?

A Yes.

Q How many roommates do they have?

A Just one, and some cases if it's -- we have a problem in the institution, such as a disturbance -- large disturbance, we can go up to -- we can bunk up to three inmates in one cell.

Q And do some inmates just have their own cell up there?

A Yes, they might be what they call a status of record house alone because they might be dangerous security concern, or they might be an individual that might have a lot of seperatees.

Q Seperatees

A Seperatees. I guess that's been issued by the U.S. Attorneys Office because these issue individuals are either testifying against the individual or individual is testifying against them.

Q So seperatees are supposed to be separated?
A Yes.
Q And you said that is something that you get an indication from the U.S. Attorneys Office I think you just said?
A Normally --
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q How do you determine who is to be separated from who?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
Q And in the Special Housing Unit will how long is there a period of time when people generally are supposed to be in the Special Housing Unit?
MS. ARGENTIERI: Objection.
THE COURT: Sustained.
MR. JASPER: No further questions.
THE COURT: Very well.
And any redirect?
MS. ARGENTIERI: Just briefly.
REDIRECT EXAMINATION
BY MS. ARGENTIERI:
Q You were asked about how the visiting room functioned; is that correct?
A Yes.
Q You said it holds up to about a hundred people?

A Yes.
Q And there are only three or four guards to watch what is going on?
A Commonly referred to as correction officers.
Q Three or four correction officers?
A Yes.
Q And you were asked about the telephone system in the MDC. In your experience have you ever come across an inmate using someone else's phone?
A Yes.
Q People can do that in there?
A Yes. It happens on -- it happens a lot.
Q And just one further question. Are legal phone calls recorded.
A No. If an inmate uses his own pin number to speak to his attorney on our phones, the intimate talks on the system at the MDC they were recorded, but by policy, since it's an attorney-client privilege we are not supposed to monitor his calls.
Q You are not supposed to monitor?
A No.
Q And they're not produced?
A No.
THE COURT: Anything else?
MR. JASPER: Yes, Your Honor.

RECROSS EXAMINATION

BY MR. JASPER:

Q Sir, did you just say that an attorney-client -- an attorney inmate telephone call is however monitored and recorded?

A It is not monitored; it is recorded.

Q It is recorded?

A Yes.

Q And that -- and that's a phone call with an inmate's attorney, correct?

A Yes.

Q Now, do you also record the telephone number that the inmate is saying belongs to his attorney?

A Yes.

Q You have to do that, right?

A Yes, we have to. In order to make a phone call you have to put it on the telephone list and then put it in the system.

Q So you have a list of whether or not that actually is an attorney's office?

A Yes.

MR. JASPER: No further questions.

MS. ARGENTIERI: One more question.

REDIRECT EXAMINATION.

BY MS. ARGENTIERI:

Q You said that if an inmate uses his pin it is recorded;

is that correct?
A Yes.
Q Is there a separate system to make legal calls?
A Yes, the intimate can request through his counselor to make a non -- basically what they call a non-monitored phone call. Basically it is not done through the system where it is recorded. So basically they will plug in a jack through a regular phone line and call the attorney and they can talk that way.
Q Those calls are not recorded?
A No.
Q And they are not monitored?
A No.
MS. ARGENTIERI: No further questions.
RECROSS EXAMINATION
BY MR. JASPER:
Q The non-monitored legal call, does the institution keep a record of the telephone number?
A Yes, the counselor unit team member that initiates the legal call for the inmate must annotate what is called a legal phone call log.
Q I'm sorry.
A Go ahead.
Q And does the counselor initiate that phone call to the attorney?

A Yes, because he has to ascertain if it's an actual attorney's office that he's calling.

Q He has to make it sure it is, in fact, an attorney's office, right?

A Yes.

MR. JASPER: No further questions.

THE COURT: Anything else?

MS. ARGENTIERI: No.

THE COURT: The witness is excused. You may stand down, sir.

Let me check with the jury. Does the jury want a brief recess? Very brief. Five minutes. All rise for the jury.

(Jury exited the courtroom)

THE COURT: All right. Let me ask. Next witness is a medical examiner?

MS. MERKL: Yes.

THE COURT: And that is your last witness? How long is the direct for the medical examiner?

MR. DENNEHY: Twenty minutes.

MR. GOLTZER: We have a witness, Your Honor, who has been waiting for a good part of the day. Are you going to take him today?

THE COURT: I am going to try. It depends on how long the next witness goes and if you want to forego making a

motion until the end of the day, I can do that.

MR. GOLTZER: I am happy to do that so he is not inconvenience.

THE COURT: That is fine. If it agreeable to the defense to have the Rule 29 motion made after the close of testimony today, so you can get your first witness on, that would be fine with the Court if it is fine with you.

MS. SANTIAGO: That is fine.

THE COURT: All right. We will take five minutes please.

MS. MERKL: Just to close the loop on the discussion we had yesterday and resolve an issue that -- let Your Honor know, I don't know if it was the defendant's motion or what but the MCC today did a diligent search of their files and they found the MDC logbook that had been the subject of defendant's spoliation motion. Both parties reviewed the original book. I'd just like to note for the record they are here in court. I don't know if that motion is moot but it certainly would be from the government's perspective.

MR. GOLTZER: The motion is mooted by a miracle.

THE COURT: I am so glad to hear something worked out without court intervention.

MS. MERKL: Thank you, Your Honor.

(Court recessed); (Court resumed).

THE COURT: Bring in the defendant, bring in the

jury.

Okay. I have the redacted version of the allocution of Michael Mancuso on August 6, 2008; is that agreed to?

MS. MERKL: Yes.

MR. GOLTZER: Yes.

THE COURT: So it is going to be admitted.

MR. GOLTZER: There's and error, not quite by us, but there's an err on the cover page. It says criminal cause for sentencing. Really means criminal cause for pleading.

THE COURT: You can make that statement to the jury that it's a pleading not a sentencing.

MR. GOLTZER: And that this is an error and we agree to correct it.

THE COURT: Yes, we are rectifying it an should understand the word sentencing should have been pleading.

MR. GOLTZER: Our witness is quite appreciative that you are letting us take him out of order.

THE COURT: Who is the witness.

MR. GOLTZER: He is a licensed pharmacist.

(The following took place in the presence of the jury)

THE COURT: Please be seated.

The government may call its next witness.

MR. DENNEHY: The government calls Beverly Leffers.

B E V E R L Y L E F F E R S , having been first duly

sworn/affirmed, testified as follows:
DIRECT EXAMINATION
BY MR. DENNEHY:
Q What do you do for a living.
A Medical examiner for the City of New York.
Q For how long have you been so employed?
A Since 1979.
Q What is the primary role of a medical examiner?
A The office investigates cases of unusual unnatural suspicious violent and unexplained deaths. We do autopsies in many of those cases. We issue autopsy reports which contain our findings, and we issue death certificates which contain our opinion as to the cause of death and the manner of death.
Q Is the office of the medical examiner affiliated with the police department or any other law enforcement agency?
A No.
Q Under whose authority does the medical examiner's office fall?
A It is for certain administrative functions within that Department of Health, but for any review of our findings or our conclusions it's an independent agency.
Q You mentioned that sometimes you perform autopsies, what is an autopsy?
A Autopsy is an examination of a dead body, it includes an inspection of the body surfaces, and it also includes making

1 up some incisions into the body, and the examination of the
2 orifice.
3 Q And when does a death within the City of New York fall
4 within the jurisdiction of the Medical Examiner's Office?
5 A Any death that is or might be other than natural causes
6 and any death that occurs without medical personnel being
7 available to a person.
8 Q What education and training did you receive prior to
9 becoming and assistant medical examiner?
10 A I have a medical degree from the Medical College of
11 Virginia. I received it in 1974. I have post graduate
12 training in anatomic clinical and forensic pathology and I am
13 board certified in anatomic clinical and forensic pathology.
14 Q What are those terms? What is anatomic pathology?
15 A Anatomic pathology is the diagnosis of disease through
16 anatomic methods like the autopsy or like inspection of
17 surgical specimens. Clinical pathology is diagnoses through
18 laboratory methods. Forensic pathology involves some anatomic
19 techniques and some clinical techniques in the investigation
20 of cases that have legal importance.
21 Q Can you approximate how many autopsies you have
22 performed?
23 A I have done a few thousand.
24 Q Have you previously testified as an expert in the field
25 of forensic pathology?

A Yes.
Q On approximately how many occasions?
A Hundreds of times.
Q In which courts?
A The Eastern District of New York, the Southern District of New York, the five boroughs of New York City, and some courts out of this area.
MR. DENNEHY: Your Honor, pursuant to rule 702 I would offer Dr. Leffers as an expert in the field of forensic pathology?
MR. GOLTZER: Certainly no objection.
THE COURT: All right. The witness is designated as an expert in the field of forensic pathology and you may pursue your question.
MR. DENNEHY: Your Honor, pursuant to rule 902 I would offer 302, which is the official autopsy report of Randolph Pizzolo.
THE COURT: Any objection. 302 is admitted?
(Government Exhibit 302 received and marked into evidence).
MR. DENNEHY: May I approach the witness?
THE COURT: Yes, you may.
Q Doctor, did you perform an autopsy on the body of Randolph Pizzolo?
A Yes, I did.

Q When did you perform that autopsy?
A December 2nd, 2004.
Q Did you prepare a diagram of injuries that were sustained by Mr. Pizzolo?
A Yes.
Q Is that contained within the exhibit that I just handed you?
A Yes, it is.
MR. DENNEHY: Your Honor, may I will offer Government Exhibit 303-1, which is the body diagram prepared by the witness?
MR. GOLTZER: No objection.
THE COURT: 303-1 is received in evidence. You may publish it to the jury.
(Government Exhibit 301-1 received and marked in evidence)
MR. DENNEHY: I offer the blow-up of that as well.
THE COURT: Yes.
MR. DENNEHY: Yes. 303.
THE COURT: Any objection? All right. Admitted into evidence.
(Government Exhibit 303 received and marked in evidence)
Q ? Did you perform an external examination of Randolph Pizzolo Pizzolo's body, Doctor?

A Yes.
Q Can you state for the jurors the summary of those findings?
A There were a number of gunshot wounds at the body which I observed, both entrance and exit wounds on multiple areas of his body.
Q And generally, what parts of his body had been shot?
A His head and his trunk.
Q If the front of his trunk or the back or both?
A Both.
Q Did he have any other notable injuries on the surface of his body?
A There was a small area of abrasion on his knee.
Q Were you able to determine which of those gunshots wounds were entrance and exit wounds?
A Yes, I was.
Q How did you do that generally?
A An entrance wound is generally oval wound, and it generally shows the some rubbing away or an abrasion of the skin around the entrance wound. An exit wound by contrast is usually a slit-like or star shaped wound that does not show an abrasion.
Q How many separate gunshot wounds did the body of Randolph Pizzolo have?
A Seven.

Q Was this case given a unique number in the medical examiner's office?
A Yes, it was.
Q What was that?
A K04-Volume 5974.
Q What does the K stand for?
A Kings County.
Q That's Brooklyn?
A Yes.
Q What does the 04 stand for?
A The year.
Q 5,974, what does that stand for?
A That's the consecutive case number for the year.
Q Were the gunshot wounds all of the same general size, Doctor?
A Approximately, yes.
Q Were they consistent with the same size bullets?
A It could be, yes.
Q Did you number the gun hot wounds in your autopsy report?
A Yes, I did.
Q How did you number them?
A It's an arbitrary numbering system just for the purpose of discussion and making a record.
Q Does it suggest in any way the order in which he was shot?

A No.
Q And on the body of itself how did you go about numbering the various gunshot wounds?
A In general, they go from top to bottom on the body. In general, the front of the body and then before the back of the body.
Q Can you describe for the jurors, please, your findings with respect to the gunshot wound of number one?
A Yes. Gunshot wound number one was on the back of the head, and the bullet travelled through the head, and the brain and the wound track ended at next to the left side of the nose. There was a bullet jacket that remained in the skin there and the core of the bullet left the body at that point.
Q On the screen what I'm circling on the right, what's that?
A That's the location of the gunshot entrance wound number one.
Q On the let side of the page I am circling an area, what is that?
A That's the area of the exit wound.
Q You said there was something recovered from that area?
A Yes, there was a copper jacket from a bullet -- an incomplete bullet.
Q What portions of the body did that bullet travel through in Mr. Pizzolo's body?

A His skull and his brain and part of his face.
Q Did you recover any items in connection with the bullet wound number one?
A Yes, I recovered that bullet jacket.
Q And did you later have it sent to the New York City Police Department for ballistics?
A Yes.
Q Did you mark it in any way?
A Yes, I did.
Q How did you mark it?
A With the deceased's last initial, my last initial, and number one.
Q Have you had an opportunity to review those items before testifying today?
A Yes.
MR. DENNEHY: If I could just show now what's in evidence, Your Honor, as Government Exhibit 311.
Q Do you recognize these three envelopes?
A Yes.
Q Do you recognize what is contained in these Ziploc bags?
A Yes.
Q What are they?
A Those are the jacket from his wound and two complete bullets that I recovered from other wounds on this case, and the envelopes that I placed them in at the autopsy.

Q The bullets have almost like a star-like or flower-like appearance, do you know what that is?
A That's a particular form of ammunition that does come apart like that when it's fired.
Q Is that a hollow point bullet?
A Yes.
Q Directing your attention now to gunshot number one, number two, can you describe that based upon your findings for the jurors?
A Yes. That's wound is not depicted on this diagram because it would not be visible looking at a person with their head straight on the way it is in the diagram. The wound is underneath the chin on the neck.
The wound is on the right side of the neck with an entrance wound and travelling through the soft tissues of the neck and will exit on the left side of the neck.
Q If I draw a line from his right to his left in that direction that I've indicated?
A Yes, that's correct.
Q Did that bullet wound traverse any vital organs in Mr. Pizzolo?
A No, it didn't.
Q Can you describe gunshot wound number three based upon your findings?
A Gunshot number three, as I numbered them, was on the back

of the right shoulder and it travelled through the tissues of the shoulder to an exit wound, which is on the front of the right shoulder.

(Continued on next page)

BY MR. DENNEHY:

Q So the two areas which I have circled, which would be the entrance, the right or the left?

A The right. The one that shows on the back of the body.

Q So it entered in the back of his arm and entered towards the front of his shoulder?

What parts of the body did that bullet transverse.

A It just went through the muscles of the shoulder.

Q Gunshot wound number four, can you describe that for the jury?

A Yes.

That was located on the upper front part of the left shoulder and the wound traveled through the shoulder and caused a fracture of the bone of the upper arm and exited from the left upper arm.

Q In the area that I have circled, what does that represent?

A That represents the location of the exit.

Q Where on this diagram is the location of the entrance wound?

A It's on the left -- the upper part of the shoulder.

Q Can you indicate where it is on your screen?

THE COURT: Just press.

THE WITNESS: Oh. Just press.

THE COURT: Okay.

Q What damage did that bullet hole cause?
A It caused a fracture of the bone.
Q Could you describe for the jurors gunshot wound number five?
A Gunshot wound number five is on the right upper back.
Q Is that the entrance?
A The entrance is that, where the circle is. And wound track went through the right lung and through the heart and it stopped where you see the two little marks on the left upper chest. Those marks were small lacerations or small tears of the skin which were over top of the bullet, which still remained in the body.
Q Did you recover that bullet?
A Yes, I did.
Q And is it one of the three that we've shown the jurors?
A Yes.
Q What effect, if any, did that bullet wound have upon Mr. Pizzolo's body?
A That was a very serious wound. It went through the lung and caused some -- went through the heart causing severe damage of the heart. That wound in and of itself could have been fatal.
Q So if not treated he could have died from that wound alone?
A Yes. He would have had profuse internal and external

hemorrhaging from that wound.
Q Bleeding?
A Yes.
Q Would he have died instantly from bullet wound number five?
A He would not die instantly. But it would be a very short period of time.
Q Would he have the ability to move around after being shot, from that wound?
A Possibly for a short time.
Q And with respect to bullet wound number two, would he have lived if he sustained just bullet wound number two?
A Bullet wound two was the wound of the neck. That was a trivial wound.
Q Gunshot wound number three, would he have died necessarily from that wound?
A No.
Q And how about number four?
A No.
Q But five in and of itself would have killed him over a period of time?
A Yes.
Q Can you describe for the jurors gunshot wound number six?
A Gunshot wound number six is on the back, near number five. The wound track went into the body through the aorta,

which is the largest artery in the body, through the pancreas and to the front of the body where it stopped in the abdominal wall.

Q Did you recover that bullet at autopsy?

A Yes, I did.

Q Gunshot wound number six, would that wound in and of itself have been fatal for Mr. Pizzolo?

A Yes, it could have been. An injury of the aorta is a very serious injury, again, would cause severe external and internal bleeding and a person would bleed to death over a short period of time.

Q They wouldn't die necessarily instantly from that wound?

A They would not die instantly.

Q Can you describe gunshot wound number seven for the jury?

A Gunshot wound number seven is located on the front of the abdomen. That's the entrance wound. The wound track went through the body going through parts of the intestine and then it went to an exit wound on the back.

Q Would that wound in and of itself have proven fatal?

A That wound would be serious. It could cause bleeding and also infection. It would require treatment. If it were not treated or not properly treated it might cause death. But not in a short period of time.

Q And is it fair to say, doctor, that from the body itself you have no way of knowing the sequence, the order in which he

was shot?
A No, I don't.
Q What is toxicology?
A Toxicology is the study of poisons and their effect on the body. When we speak of our toxicology laboratory, that's a place where they run chemical tests to discover whether there are any drugs or alcohol or poisons in the body.
Q Was that done in this case?
A Yes.
Q And can you describe for the jurors, please, what if any results you have?
A There was a breakdown product of cocaine found in the urine.
Q Other than these seven gunshot wounds, in what relative health did the body of Randolph Pizzolo appear to you?
A He seemed to be otherwise in fairly good health.
Q Did you come to a conclusion based upon a reasonable degree of medical certainty as to the cause of death of Randolph Pizzolo?
A Yes.
Q What was that?
A Gunshot wound of head body and extremities with perforations of brain, lung, heart and aorta pancreas intestines and mesentery.
THE COURT: I'm sorry. What is mesentery?

THE WITNESS: Mesentery are the connective tissues associated with the intestines.

THE COURT: Thank you.

Q Were photographs taken at your autopsy, doctor?

A Yes.

MR. DENNEHY: May I approach the witness.

THE COURT: Yes, you may.

Q Showing the witness what we have marked for identification as 304 WW, YY, BBB, II, E and D?

Did you have an opportunity, doctor, to review these photographs before you testified.

A Yes.

Q And are they some of the photographs taken at the time of your autopsy of Randolph Pizzolo?

A Yes.

Q Do they fairly and accurately depict various portions of his body before the autopsy was completed?

A Yes.

MR. DENNEHY: I offer those, your Honor.

MR. GOLTZER: No objection.

THE COURT: 304 WW, YY, BBB, II, E and D are received in evidence without objection.

(So marked.)

THE COURT: You may publish them to the jury.

MR. DENNEHY: Thank you, your Honor.

Q Doctor, showing you 304 YY, what does that depict?
A That depicts the left side of his body.
Q Could you indicate on your screen any of the wounds that we have been discussing or the general area of those wounds?
A This area would be the exit wound of the number two, the one that went under the chin on the front of the neck.
Q You've circled that in blue?
A This is the location of the bullet from number five, with a few lacerations over the surface of the skin. I believe those are the only ones visible. Oh. Right by the nose is the partial exit of bullet wound number one.
Q Thank you, doctor. I'm going to clear the screen?
Showing you what's in evidence as Government's Exhibit 304 WW. What's depicted in this area on his left knee that I have circled.
A That's some abrasion or scraping of his knee.
Q Would that be consistent with a pavement rubbing up against his leg?
A Yes.
Q Showing you, doctor, what's in evidence as 304 BBB, what is depicted in this photograph?
A That is his right side.
Q Is this an injury here?
A There's an exit wound right here.
Q On the top of his right shoulder?

A That's exit wound number three.
Q Can you also see with a little bit of the shadows of gunshot wound number two through his throat?
A Yes, I believe so.
Q Doctor, now showing you what's in evidence as 304 II, what does that photograph depict?
A His right side and the left side of his back. The arm is turned around.
Q Is this a bullet wound here?
A Yes. That would be entrance wound number four.
Q Is there a bullet wound in the center of the right side of his back as well?
A I'm sorry. I misspoke. That would be exit wound number four.
This would be probably wound number six entrance. Five and six should be near each other in the shadows there.
Q Showing you, doctor, what's in evidence as 304 E. What does that photograph depict?
A That is the entrance wound on the head, which I called number one.
Q Doctor, are you familiar with the term stippling and fouling?
A Yes.
Q What are those?
A Stippling is a pattern of purple and black dots that are

1 produced by unburnt and burning, grains of gun powder striking
2 the skin surface and becoming imbedded in the skin surface.
3 It happens if a gun is held at close range. For the most
4 handguns it might appear if the gun is held at no more than
5 about twelve or eighteen inches.
6 Fouling is a pattern -- is a deposit of fine black
7 powdery material which would be the burnt gun powder or the
8 smoke or soot coming from the end of the gun and that would
9 indicate a very close range gunshot wound, up to about a
10 couple of inches.
11 Q Did you detect either of those conditions in this
12 particular gunshot wound?
13 A No.
14 Q Did the weather conditions such as rain or being found
15 underwater have an effect on either stippling or fouling?
16 A In relation to this wound?
17 Q Yes.
18 A It might. And also the presence of something between the
19 gun and the skin might block the deposition of powder or soot
20 on the body, such as hair or possibly clothing or other
21 objects.
22 Q Was this area of Mr. Pizzolo's head shaved for the
23 purpose of your examination and taking photographs of the
24 wound?
25 A Yes.

Q That was covered with hair when he actually got shot?
A Yes.
Q You mentioned the weather and the rain. Is there a way to determine an estimate of a person's time of death?
A There are various ways to estimate a time of death.
Q Are they exact?
A No.
Q Where a person is found out of doors on a cold day underwater, how if at all does that effect an estimate of a time of death?
A Well, we estimate time of death by the cooling of the body and being in a cold environment would obviously make the cooling go faster than it would in a warm environment. We also look at stiffening of the body and pooling of the blood to the deep-ended portions of the body.
Q Did you receive information from a medical legal investigator who actually went to the scene and examined Mr. Pizzolo's body at the scene?
A Yes.
Q And did that person make certain findings about the condition of the body and the temperature of the body when it was found?
A Yes.
Q Are you able, doctor, at all to fix even an estimate of the range of hours before the time Mr. Pizzolo was found at

6:20 a.m. for the time that he was killed?
A It would only be a very loose estimate. When he was found his body temperature was 86 degrees. So his body had cooled by approximately ten degrees or twelve degrees from normal living body temperature.
If he were in a room temperature environment that would indicate a lapse of time of about twelve hours. Since he was out in the colder environment it probably happened a little faster than that.
On the other hand, he is completely stiff already at the time he was examined and that would indicate generally more than eight hours.
Q So is it fair to say, doctor, that sometime between eight to twelve hours before his body was found is a viable estimate of the time of death?
A That would be a reasonable estimate.
Q Showing you now Government's Exhibit 304 D in evidence. What's depicted in this photograph?
A That is his face and the exit wound of number one, with the jacket of a bullet still in place.
Q Did you recover the bullet itself?
A I did not recover the bullet. I recovered the core. That was what was present.
Q Doctor, I would like you to assume that a man is laying face down on the pavement, at which time gunshot wound number

one occurs, where he's shot in the back of his head, through the brain with an exit wound in the front of the face. Where would you expect to find that bullet?

A The core, if he was immobile, already lying on the ground when he was shot, the core should be on the pavement very near where this wound is on his face.

Q Doctor, based upon your examination of the body of Randolph Pizzolo and the various gunshot wounds, would it be consistent with a pattern of him having been shot first in the front of his body and then in the back of his body and then as he lay face down on the ground shot through the head?

A Yes, it could be.

Q And gunshot wound number one through his head, would that be a fatal injury in and of itself?

A Yes.

Q In what fashion?

A That wound went through the vital structures, the deep structures of the brain which control all the vital functions of the body and destroyed those centers.

Q With respect to gunshot wound number one, would that cause death instantaneously?

A That would cause virtually instantaneous death.

MR. DENNEHY: I have no further questions for the doctor.

THE COURT: Cross-examination.

MR. GOLTZER: None, thank you.

THE COURT: All right. The witness is excused. You may stand down.

(Witness excused.)

THE COURT: Ms. Merkl?

MS. MERKL: Your Honor, at this time, the government's rests.

THE COURT: Very well.

At this time the government rests.

The court has been advised that the defense will present a case. You may proceed with your case at this time.

MR. GOLTZER: Thank you, your Honor.

THE COURT: You may call your first witness.

MR. GOLTZER: As it's first witness the defense calls Ubaldo Eguino.

U B A L D O E G U I N O,

having been duly sworn was examined and

testified as follows:

THE CLERK: State your name and spell it, please.

THE WITNESS: My name is Ubaldo Eguino. U B A L D O, E G U I N O.

THE COURT: You may inquire.

MR. GOLTZER: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. GOLTZER:

Q Mr. Eguino, good afternoon.
A Good afternoon.
Q What is your profession?
A A pharmacist.
Q Are you licensed pharmacist?
A Yes, in New York State.
Q How long have you been licensed a licensed pharmacist in New York State?
A Since 1983.
Q Are you currently employed anywhere?
A Yes, I am.
Q Where is that?
A Throgs Neck Pharmacy in the Bronx.
Q Do you have any ownership interest in Throgs Neck Pharmacy?
A Yes, I'm half owner.
Q With a partner?
A Yes.
Q How long have you been at that pharmacy?
A Ten years.
Q And were you in a different pharmacy before that?
A Yes.
Q What pharmacy was that?
A That's Good Health Pharmacy.
Q Where was that?

A Tremont Avenue near the cross Bronx Expressway.
Q Are both of the pharmacies that you just described in the Bronx?
A Yes, they are the Bronx.
Q Directing your attention to approximately September of 2004, were you in the process of constructing anything?
A Yes.
Q What was that?
A My house, where I'm living now.
Q Where are you living now?
A The address is 3086 Giegerich Place in the Bronx.
Q That's in what port of the Bronx?
A In Throgs Neck.
Q Is that a single-family home or a multiple-dwelling home?
A It's a two-family actually.
Q Is it near the water or not?
A Yes, it is near the water.
Q When did you begin to build that house?
A I think it was around -- I'm sorry. About six years ago.
Q In August or September approximately of 2004, were you under a time constraint with respect to any particular issue?
A Yes, sir. The building codes in the Throgs Neck area they were down-sizing.
Q What does that mean, if you know?
A It meant the foundation had to be in place -- I already

had purchased the lot. I already had paid for the plans to build the house. The house was approved but I needed to have a foundation in, in place, before October 15 I believe it was of that year. So I was under sort of time constraints.

Q Were you able to find somebody to assist you with excavating the foundations and meeting the time limit?

A My architectural engineer at the time recommended someone who had done some foundations in the area.

Q Who was your architectural engineer at that time?

A His name is Joe Martinez.

Q And -- without offering it for the truth -- what did Mr. Martinez tell you?

A That he was aware of someone doing foundations on Shurz Avenue and he was getting them done fairly quick. That I may want to reach out to him and see if he would be interested in building our foundation.

Q Did Mr. Martinez give you the name of that person?

A Yes, he did.

Q What name had he given you?

A Randy. He called him Randy P.

Q Did you get a phone number for Randy P?

A Yes.

Q Did you reach out to Randy P?

A Yes, I did.

Q And as a result of reaching out to Randy P, did you

arrange to meet him someplace?
A He asked me to come to the building site, the foundations where he was working.
Q Where was that?
A On Shurz Avenue.
Q And did you go there?
A Yes, I did.
Q And when you went there, did you have occasion to meet Randy P?
A Yes, I did.
Q Did you see anybody else there that you knew?
A Yes. Vincent Basciano was there also.
Q How did you know Vincent Basciano?
A Vincent was a customer of the store also.
Q For how long had Vincent been a customer of the store, if you remember?
A Awhile. I would say since the late 80's.
Q So it was a number of years?
A Yes.
Q Did you know Vincent's wife?
A Angela, yes.
Q Did you have more dealings with Angela or with Vincent?
A Angela.
Q Outside of Vincent and Angela being your customers, did you have any social dealings with them?

A No, sir.
Q Did you have any professional dealings with them?
A No, sir.
Q When you saw Vincent at the Shurz Avenue site, tell the jury what happened?
A When I approached -- they were actually on the top of like an a hill. I came up. I saw Vincent there. He said hello Ubaldo and shook my hand and at the time then Randy was there and Vincent said to Randy, sharpen your pencil, given a Ubaldo a good price.
Q Did you get to see the interaction between Vincent and Randy P?
A They seemed to have been talking about the building process there. Quite honestly, I didn't know what was happening there.
Q Did there appear to be construction going around you?
A Oh, absolutely, sure.
Q Can you describe it to the best of your recollection for the jury?
A There were several foundations in place. It's near the water, so they require a foundation with beams and whatnot. There was machinery. They were moving dirt around and things of that nature. So it was an active work site.
Q Had you expected to see Vincent Basciano at the Shurz Avenue site?

A No. I was there to see Randy.
Q Was it Vincent Basciano who referred you to Mr. Pizzolo originally or the other gentleman, Martinez?
A Mr. Martinez, yes.
Q Vincent asked him to give you a good price?
A Well, he said, I thought it was funny, he said sharpen your pen. I am assuming, that's what he meant by giving Ubaldo a good price.
Q What did Randy say, if anything?
A Nothing at the time, maybe smiled.
Q Did you ultimately hire Randy?
A Yes, I did.
Q How soon after you met with Randy and Vincent did you hire Randy?
A It was soon, because again we -- a matter of a week or two maybe.
Q Do you know whether he gave you a good price or not?
A Quite honestly, it was the only price. Every single builder in that area was busy and I couldn't get anyone to get me started. So I was desperate.
Q What was your deadline; do you recall the date?
A I think it was October 15.
Q Did you make it?
A Yes. Thank God. We were able to break ground and start the foundations.

Q Were you able to build the house you and your family wanted to build?
A Yes, eventually.
Q By the way, are you married, Mr. Eguino?
A Yes.
Q Do you have any children?
A I have four.
Q How old are they?
A 26, 24, 22 and 19.
Q So they not all living in the same house?
A No. They are not all in the same house at this point.
Q The work began, the work on the excavation?
A Absolutely, yes.
Q And how was it that that proceeded? Did Randy do all the work or was it somebody else?
A The gentleman that came in was like maybe subcontracted. I'm not sure of the proper word to use. I guess it was sub, a subcontractor, that Randy sent to do the excavation and the -- there was 39 pilings that had to be driven into the ground.
Q Why was that?
A It's part of the code. You need piles to be driven so that it can support the structure. It has to be above, eight and a half feet above e level.
Q Was that done?
A Yes -- no. The foundation was to eventually have that.

What was done was what's not seen, what's below the ground, which is just the actual foundation and the footings.

Q So are you saying that Randy subcontracted that out to someone else?

A I'm assuming that's what took place because he was not the same person that I had seen working on the other place. So I'm assuming that it was a subcontractor.

(Continued on next page.)

EXAMINATION CONTINUES

BY MR. GOLTZER:

Q Do you recall his name?

A Mike.

Q Do you recall whether there were any problems with Mike?

A Other than being a little pushy, no. There was no problems.

Q Did Randy supervise the work at all?

A Once in a while, Randy did come by. Or if I had an issue that I felt that Mike was maybe pushing a little too much and to try to get extra money, you know, I told -- I would tell Randy and he came to see what was going on.

Q Did he seem to resolve those problems?

A Yes.

Q Was the work completed in a satisfactory manner?

A Yes, it was.

Q The house was built?

A Yes.

Q And you are still living there?

A Yes, sir.

Q It hasn't fallen down yet?

A Not yet, thank God.

Q Did Vinny Basciano ever visit the worksite while the work was going on, if you remember?

A If he did, I don't remember being there. So it's

possible that he might have.

MR. DENNEHY: Objection move to strike.

THE COURT: Sustained.

MR. GOLTZER: Thank you for coming.

No further questions.

THE COURT: Cross-examination?

MR. DENNEHY: No questions, Your Honor.

THE COURT: You may step down. You are excused.

THE WITNESS: Thank you.

THE COURT: You are welcome.

(Witness excused.)

MR. GOLTZER: At this time, Your Honor, the defense would offer into evidence without anticipated objection what has been previously marked as Defendant's Exhibit VB, as in boy, dash P.

MS. MERKL: No objection, Your Honor.

THE COURT: All right. VB-P is received in evidence.

MR. GOLTZER: May I publish it to the jury, sir?

THE COURT: Yes, you may.

MR. GOLTZER: Thank you.

Ladies and gentlemen of the jury, I am going to read to you a part of a proceeding the took place in the Eastern District of New York, United States District Court. The title of the action is United States of America against Michael

Mancuso, defendant.

The date of the proceeding on the cover sheet, which will be provided to you, is August 6, 2008, at 3:30 in the afternoon.

It is entitled, Criminal Cause For Sentencing. By agreement of the parties and the Court, I am going to advise you that the word "sentencing" which appears on the original cover page of the document that you are going to receive is an error. What it should read is, pleading. So this is really a criminal cause for pleading.

Am I correct, Your Honor?

THE COURT: That is correct.

MR. GOLTZER: In United States District Court before a district court judge.

You will see appearances for the government and a lawyer appearing for Mr. Mancuso.

The Court -- and I am quoting what the Court said to Mr. Mancuso at page 23 of the document.

How do you plead to the charge contained in Count One of the superseding information, guilty or not guilty?

Turning to page 24, the defendant responded, quote:

Guilty.

And turning to page 25 of the same document, the defendant, Mr. Mancuso stated, and I quote from the document:

Okay. As alleged in Count One of the superseding

information, on or about November of 2004, in the Eastern District of New York, I conspired with others to murder Randolph Pizzolo for the purpose of maintaining my position in an association in fact enterprise.

The Court interrupted: I'm sorry. Slow down.

The defendant, Mr. Mancuso stated:

For the purpose of maintaining my position in an association in fact enterprise.

Then the defendant continued: As part of the plea agreement, I agree that I participated in the murder of Randolph Pizzolo.

That concludes the reading, Your Honor.

Would this be a good time to break for legal proceedings since my witness is not here?

THE COURT: Let me give a limiting instruction.

Members of the jury, please understand that you may consider Michael Mancuso's plea allocution only as evidence of the following two issues.

One, whether there was a conspiracy to murder Randolph Pizzolo and, two, whether Mancuso participated in such a conspiracy.

You may not consider Mancuso's plea allocution in any way as evidence of Mancuso's role in the conspiracy or evidence of whether or not Mancuso committed other crimes.

Furthermore, Mancuso's plea allocution is silent as

to defendant Vincent Basciano and may not be considered as evidence of the defendant's participation or non-participation in the conspiracy or any of the crimes charged in this case.

MR. GOLTZER: Thank you, Judge.

THE COURT: All right. At this time I think we can end a few minutes early. I don't see any objection from the jury.

All right. What we are going to do is we are going to recess at this time for the day and we are going to resume at 9:00 o'clock tomorrow morning. 9:00 o'clock tomorrow morning.

Please -- I am going to give you the same instruction as always -- please do not discuss the case with anyone. Don't discuss the case among yourselves. If you are taking notes, leave them in the jury deliberation room. Do not read, listen to, watch or access on the Internet any accounts of the case. Do not attempt any independent research about the case. Do not engage in any social networking regarding the case. Please do not visit any of the locations that have been identified during the course of testimony.

We thank you for your attention.

All rise for the jury.

(The following occurred in the absence of the jury.)

THE COURT: I would like to have an ex parte with the defense.

S E A L E D R E C O R D

S E A L E D R E C O R D

S E A L E D R E C O R D

S E A L E D.

(Continued on next page.)

(In open court.)

THE COURT: Yes?

MR. GOLTZER: We have notified the government that tomorrow we are going to begin calling former government witnesses on our case, including Salvatore Vitale, is the first one I believe who is going to be produced. After that, we will probably call Mr. Lee and Mr. Medina.

To the extent that there is another legal issue that may arise with respect to another potential witness, we are amenable, if the Court is amenable, to dealing with that issue whenever it is convenient for Your Honor and the witness' lawyer.

THE COURT: The witness' lawyer has indicated to the Court that he has a conference in the Southern District of New York tomorrow morning, which will keep him from our capital trial here in the Eastern District of New York. He feels obligated to go to a conference with a judge in the Southern District of New York.

I would have had him brought here by the marshals if I needed him at 9:00 o'clock in the morning. I don't really care what's going on in the Southern District of New York. I couldn't care less. I don't like being informed about it at the last minute by some lawyer who knows he has to be here at a capital trial.

Having said that, I have consulted with the defense

and they indicated that they don't need him first thing in the morning, so in deference to the defense's statement, I am not going to send the marshals to go get the lawyer from 500 Pearl Street, although nothing would please me more. Because I think it's insulting to this Court that a lawyer would make that kind of a representation and not deal with the problem over in the Southern District and explain to the judge, whoever that may be, that this is the highest priority of any kind of case that exists in the federal judicial system.

So I don't know what time he is going to show up. If you want me to get him at 9:00 o'clock, I will go have him brought here in cuffs, if necessary.

MR. GOLTZER: It's not necessary. Thank you. I don't think that it is necessary to have him shackled, bound and gagged and dragged in here.

THE COURT: I wouldn't mind.

MR. GOLTZER: I understand the Court's --

THE COURT: I wouldn't mind one bit. He knew he had to be here and he gives us a last minute statement that he has to be somewhere else at a status conference.

MR. GOLTZER: It is absolutely shocking and inappropriate, not something I would ever do. I know the man is a reputable member of the bar and we are happy to have him later in the day.

What I would hope to accomplish --

THE COURT: Is it going to interfere with going through the day until 4:00 o'clock with witnesses?

MR. GOLTZER: No, not at all.

THE COURT: Okay.

MR. GOLTZER: What I would hope to do, if it is agreeable to Your Honor -- it's late in the day. What I hoped to do is make the motions first thing in the morning.

THE COURT: What motions?

MR. GOLTZER: Rule 29.

THE COURT: Let's make them right now.

MR. GOLTZER: Very well.

THE COURT: I don't want to wait. I have a jury coming in at 9:00 o'clock tomorrow morning. I want to get going.

MR. GOLTZER: It's not 9:30? It's 9:00 o'clock?

THE COURT: 9:00 o'clock. I think it's down as 9:00 o'clock.

MR. GOLTZER: That was what it was. I didn't know if you had changed.

THE COURT: No. I only changed today. I did not change tomorrow. May 6, 9:00 am to 4:00 pm.

Okay. Would you like to go ahead?

Before we go to that?

MS. MERKL: I am just wondering if we are at any point going to get notice of who this witness is.

MR. GOLTZER: Not yet. Because I haven't decided whether I want to call him.

THE COURT: You are not calling him tomorrow?

MR. GOLTZER: No.

MS. MERKL: This is the issue with the attorney?

THE COURT: Yes.

MS. MERKL: He is not being called tomorrow?

MR. GOLTZER: No; Monday.

THE COURT: That's why it's not necessary for me to order the attorney to be here, notwithstanding his important appointment in another court.

MS. MERKL: Understood.

I just wasn't clear whether it was anticipated he would be on the stand tomorrow afternoon. The government, of course, is just trying to avoid undue delay. To the extent we have no idea who people are, we may find it incumbent upon us to request an opportunity to run a quick rap sheet.

THE COURT: On the attorney?

MS. MERKL: That too, Your Honor, if you would like us to. No, on the witness, of course.

MR. GOLTZER: As far as the rap sheet, you may want to wait until Judge Garaufis gets through with him.

THE COURT: I would just like to put on the record that this Court is very accommodating of attorneys who have other appointments in other courts, including state courts,

and that where it is clear that someone is actually engaged in a trial or plea and I am only holding a status conference, we accommodate those attorneys because we understand that private attorneys have many different obligations.

But there is no more important obligation than appearing as counsel to a witness in a capital murder trial; nothing else is as important. At best, it shows an incredible lack of judgment and, at worst, it is a slap at the Court and the proceeding. I will inform that attorney tomorrow in no uncertain terms, if he should show up.

Now, anything else on this subject?

MS. MERKL: Just with regard to Mr. Vitale, Your Honor, and the other government cooperating witnesses that Mr. Goltzer has alluded to. The government still is not in possession of any anticipated 613(b) type statements that the defense would seek to introduce through these witnesses and so at this juncture we have no choice but to request that they be precluded in their entirety as we've had no opportunity to evaluate any of them.

MR. GOLTZER: We are filing the letter within a matter of minutes. The government is already on notice, notwithstanding the issue of the 613 statements, we intend to call Mr. Vitale pursuant to Rule 405. They have known that for a long time.

In any event, they'll have our document in a little

bit. Is that okay?

MS. MERKL: Having not received it, we --

MR. GOLTZER: It has been a busy day. We apologize for what may seem like a delay. We are not trying to delay the proceedings. We have been moving with dispatch and doing our best.

MS. MERKL: The other thing, Your Honor, is there is a marshal here in court. He just would like to know tomorrow the lineup so that the marshals can know who to have in what order.

MR. GOLTZER: Mr. Vitale is number one.

MS. MERKEL: And then?

THE COURT: And after that?

MR. GOLTZER: Mr. Lee. Or actually, after that, Mr. Medina.

MS. MERKL: Okay. So Vitale, Medina, Lee?

MR. GOLTZER: Yes. I think that makes it easier for the marshals actually, if you have both on the same day.

THE COURT: Both? That's three.

MR. GOLTZER: No. Lee is not in custody.

THE COURT: All right.

MS. MERKL: We are not going to comment on Mr. Lee's situation.

THE COURT: I am not either.

All right. The question is, how long do you think

the direct of Mr. Vitale will take?

MR. GOLTZER: An hour.

THE COURT: You don't know about the cross yet?

MS. MERKL: No, Your Honor.

Obviously, it is going to depend on direct.

I also question how it could take an hour to inquire about Mr. Massino's general reputation for truthfulness.

MR. GOLTZER: I need to introduce Mr. Vitale to the jury, as the government introduces its witnesses to the jury.

MS. MERKL: I am just putting Mr. Goltzer on notice.

THE COURT: All right. That's an hour, maybe two.

And then Mr. Medina?

MR. GOLTZER: Yes.

THE COURT: How long will his direct take?

MR. GOLTZER: I would anticipate, no more than an hour.

THE COURT: All right. That's, let's say, three hours altogether. And then Mr. Lee?

MR. GOLTZER: A couple of hours. It's probably for the remainder of the day.

THE COURT: Here is the point. The point is, that if you finish at 3:15, there should be another witness waiting in the wings.

MR. GOLTZER: We have asked the -- we have asked for a witness by the name of Vasaturo, who is in the MDC, Frank

Vasaturo. I didn't think we would get through all of the witnesses tomorrow, the first three witnesses tomorrow, quite frankly.

THE COURT: We are starting at 9:00 o'clock. That's the reason I mention that.

MR. GOLTZER: We are going until 4:00 o'clock.

THE COURT: I don't want to lose any time tomorrow afternoon.

MR. GOLTZER: We are going until 4:00 o'clock.

THE COURT: Yes.

Wait. Stop.

MS. MERKL: I was just inquiring if Mr. Vasaturo's attorney is coming.

MR. GOLTZER: We don't know. I tried to contact the attorney who I knew had last represented Mr. Vasaturo. She was in Buffalo, New York. And since her representation was completed in state proceeding, she has not been returning my calls.

I don't know if Mr. Vasaturo has an attorney in connection with this particular production.

THE COURT: Is he appearing voluntarily?

MR. GOLTZER: Pursuant to a subpoena.

He had -- what happened was, he came down a couple of days ago but we were told we could not see him until Saturday because he has a heart condition. He was initially

hospitalized.

THE COURT: Was what?

MR. GOLTZER: Hospitalized, in the -- in the prison system.

THE COURT: Do I need to appoint him a lawyer?

MR. GOLTZER: It might be prudent.

MS. MERKL: Your Honor, the last contact that this office had with Mr. Vasaturo, he was represented by Larry Silverman, which I did advise Mr. Goltzer when he produced his writ ad testificandum for Mr. Vasaturo. I have no idea if there is still a representation between Mr. Silverman and Mr. Vasaturo or whether Mr. Silverman's prior appointment was pursuant to the CJA panel. I just don't know.

THE COURT: When Mr. Vasaturo appears I will ask him outside the hearing of the jury whether he wants me to appoint him a lawyer and whether he would like to delay his testimony in order to consult with a criminal defense lawyer as to whether he wants to assert any privilege. Okay? That way we protect his rights.

MR. GOLTZER: That's fine.

THE COURT: He might show up with a lawyer, who knows. So we are not going to anticipate that. We will just deal with it if and when we need to.

Okay?

MR. GOLTZER: Yes.

THE COURT: Anything else?

MR. FRANK: With respect to Mr. Lee, he's already advised the parties that he intends to invoke his Fifth Amendment right. I have spoken to his attorney, Joel Cohen, who has indicated they will be here first thing in the morning.

THE COURT: Very good.

That's it for tomorrow's plan?

MR. GOLTZER: Yes, sir.

THE COURT: Okay. Why don't we hear any motions that the defense wishes to make at this time.

MR. GOLTZER: I respectfully move pursuant to Rule 29 of the Federal Rules of Criminal Procedure for a judgment of acquittal with respect to each and every one of the three counts.

With respect to the conspiracy count, I respectfully suggest that the evidence is legally insufficient for a couple of reasons. Number one, with respect to the -- I understand that the standard here is in the light most favorable to the government and can the jury rationally find evidence of legal sufficiency beyond a reasonable doubt.

In this case, the problem with respect to the conspiracy count is twofold. Number one, while Mr. Cicale claims that Mr. Basciano gave him an order, I have yet to see in the record an overt act in furtherance of this verbal

agreement under state law, which according to our position, is incorporated into the federal statute. Absent an overt act, there can be no conspiracy.

Obviously, there is a killing here, but when one takes Mr. Cicale's testimony on its face, in a light most favorable to the government, Mr. Cicale states that as of the time that Mr. Basciano was arrested, when there is still in the record no overt act, he communicated to the other participants in the plan not to do it. It's done. It's over.

It seems to be black letter law that a conspiracy, if it ever existed, ends when either there is an accomplishment of its objective or there has been a frustration of the plan, a termination of the plan.

To the extent that a jury could rationally find, even if there were an overt act, that there was ever a conspiracy, either under New York State or federal law, it had terminated. Since we require an overt act in this conspiracy and that didn't happen, there must be a dismissal of Count one.

If there is arguably a second conspiracy between Mr. Cicale, Mr. Mancuso and the other participant, Mr. Aiello and whoever drove him to the scene, there is legally sufficient evidence that Mr. Basciano even in a light most favorable to the government was ever a member of the second conspiracy. Because the government has presented zero

evidence in this case that Mr. Basciano's order was the motivating factor in the second conspiracy. I checked the record. I didn't see it.

So that's the argument with respect to the conspiracy count.

With respect to the murder count, it is our allegation, our position, that Mr. Basciano admitted on the tape giving Mr. Cicale an okay. That's what the tape audibly said, even though the transcript said order, and the tape is the evidence.

Having admitted giving an okay on the tape, and having then stated that Michael gave the order --

MS. MERKL: The okay.

MR. GOLTZER: Michael gave the okay also? That's fine.

It is our position, legal position in terms of sufficiency of the evidence, that even if you accepted Mr. Basciano's statement at face value, that he gave Mr. Cicale an okay before his arrest, one still has no overt act, so, therefore, there is no conspiracy that he can be criminally liable for in this court on this charge, and that his giving the okay, there was an interrupting matter which was calling it off by Mr. Cicale. Michael giving the final order as was testified to by Mr. Cicale, was the cause of death and nothing that Mr. Basciano did placed into motion the

second conspiracy which was initiated by Michael on the evidence in this case. So Mr. Basciano is not guilty of the murder.

Since Mr. Basciano is not guilty of the murder as a matter of law, he could not have committed the third count, which is possession of a firearm in furtherance of the crime of violence.

That's the Rule 29 argument, Judge.

THE COURT: Thank you very much.

MS. MERKL: Your Honor, not surprisingly, the government entirely disagrees with Mr. Goltzer's characterization of the evidence.

With regard to the arguments pertaining to the conspiracy, Mr. Cicale clearly testified that Mr. Basciano and Mr. Cicale had multiple conversations prior to Mr. Basciano's being arrested where they discussed specifics as to who the shooters would be and how the murder was going to be committed.

So even assuming for the purpose of argument that there was some second conspiracy, which I will address in a moment, there is unquestionably sufficient evidence, taking the evidence in the light most favorable to the government, that Mr. Basciano and Mr. Cicale engaged in overt acts prior to Mr. Basciano's arrest. They had conversations. There need be nothing additional.

And overt act is, as Your Honor knows, can be anything. It can be going to the grocery store and picking up gloves. It can be anything at all.

So with regard to the claim that there is no conspiracy because there is no overt act, it is just simply not true.

With regard to an argument that the conspiracy was in some way frustrated or terminated by Mr. Cicale's temporarily having cold feet, as to whether he was going to participate in the conspiracy, may have delayed the conspiracy but certainly didn't frustrate or terminate the conspiracy as the defense would argue.

Mr. Cicale's testimony was very clear, that when Mr. Mancuso approached him he said that thing with Randy, make sure it gets done, which Mr. Cicale understood to be a clear reference to the previously existing conspiracy and a continuation of conspiracy.

The fact that it became Mr. -- it came to Mr. Cicale's attention at that point, that Mr. Mancuso had joined the conspiracy, a fact he was unaware of prior to that conversation, in no way suggests that the conspiracy was terminated by Mr. Cicale's temporarily considering withdrawing from the conspiracy.

Mr. Cicale's thought process and Mr. Cicale's steps that he took are simply not relevant to this defendant's

intent to participate in the conspiracy and this defendant's instructions to Mr. Cicale prior to the time of his arrest.

With regard to Count Two, Your Honor, it is unquestionable that Mr. Pizzolo was killed because Mr. Basciano instructed Mr. Cicale prior to his incarceration that this was what needed to be done. Randy was out of control. He was doing a bunch of things that Mr. Basciano didn't approve of, and Mr. Cicale's testimony again makes clear that when the plan was set back into motion after his conversation with Mr. Mancuso, it was due to the fact that he had previously been instructed by Mr. Basciano that this murder was to occur.

(Continued on next page.)

MS. MERKL (Cont'd): Given Mr. Basciano's liability with regard to the conspiracy and with regard to Count Two, the substantive murder, taking the evidence in the light most favorable to the government, as the Court must do on the Rule 29 application, there's -- the 924(c) charge stands. There's no deficiency with regard to that charge. Should the Court conclude there's a sufficient evidence for the jury to find Mr. Basciano's guilt with regard to Counts On and Count Two.

In addition, Your Honor, it's not just Mr. Cicale. As the Court knows, Mr. Basciano Admitted on tape he was responsible for the murder. He admitted on tape he was a member of the conspiracy. He told Mr. Barbieri that he was responsible for the murder and he told Joe Massino in a codefendant meeting hew as responsible for the murder. So there's clearly sufficient evidence for this case to go to the jury.

MR. GOLTZER: Just so the record is clear, Your Honor, I am not going to argue the facts alleged, but if two people verbally agree to commit a crime but there is no overt act in addition to the verbal agreement, there is under federal law, unless there's no overt act requirement no conspiracy because the conspiracy law provides that it's not mere conversations or thoughts or agreements that are against the law but it's actions. In narcotics conspiracies there is no overt act requirement.

THE COURT: Well, assuming the conspiracy continued, notwithstanding Mr. Cicale's cold feet statement, decision, whatever, there were overt acts which led to the -- assuming that the conspiracy continued, there were overt cats other than conversation.

MR. GOLTZER: After the Mr. Cicale called off the agreement.

THE COURT: Well, is your position that your client withdrew from the conspiracy at some point?

MR. GOLTZER: No, my position -- I need to clarify it for the record. My factual position, which I am not going to assert on a Rule 29 motion, is that Mr. Basciano was never a member of the conspiracy. That's a jury issue. The legal issue is different. The conspiracy, if it existed at all, even if there was an overt act before Mr. Basciano's arrest terminated and that had a legal consequence --

THE COURT: It terminated because he was arrested?

MR. GOLTZER: No. It terminated because Mr. Cicale didn't have cold feet, Mr. Cicale testified unequivocally I decided when Mr. Basciano was arrested I was going to let it go by. I was going to disobey his order and I was going to stop and to do that I called up Mr. Aiello and communicated with Mr. Aiello, we're not doing this and I spoke to Mr. Gambina and I told him Mr. Gambina we are not doing this. This is over. It is unequivocal. It's not cold feet. It's a

finished. Once that happens any conspiracy that Mr. Basciano was arguably a member of is finished. So he is no longer responsible for the actions of anybody else in a new conspiracy later -- either on Pinkerton or any other theory. Whatever he agreed to, if he agreed at all, is over. Now, the reason it is legally sufficient is there's no overt act in that conspiracy.

MR. GOLTZER: That's our position.

THE COURT: Is it an over act to reach out to another person to participate in the conspiracy on behalf of a coconspirator?

MR. GOLTZER: I don't believe so.

MS. MERKL: Yes.

THE COURT: You think it is just bringing more people into the circle?

MR. GOLTZER: I think it is just bringing people into an agreement.

THE COURT: But that's not an overt act to promote the original conspiracy to get a shooter?

MR. GOLTZER: Giving an order is not a conspiracy in and of itself.

THE COURT: Maybe the Second Circuit will want to look at that. Anything else?

MS. MERKL: No, Your Honor. It's to the government being a participant is an overt act.

MR. GOLTZER: We made our position.

THE COURT: Thank you, very much, everyone.

The Rule 29 as Counts One, Two and Three is denied.

MR. GOLTZER: At some point, Judge, whenever it is convenient, it certainly doesn't need to be today, we would request that ex parte meeting with the client, whenever it is convenient.

THE COURT: I think we ought to have it now. I'll ask everyone else to leave. We can have it right now. Thank you, everybody.

MR. GOLTZER: That is fine.

(THE FOLLOWING IS A SEALED RECORD)

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MR. GOLTZER: Thank you, your Honor.

THE DEFENDANT: Thank you very much, your Honor.

THE COURT: You're most welcome.

Have a good evening.

(Case adjourned to Friday, May 6, 2011, at 9:00 a.m.)

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